the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace at Deer Lodge-City-County Airport, Deer Lodge, MT, to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedures at the airport. This action would enhance the safety and management of instrument flight rules operations at Deer Lodge-City-County Airport, Deer Lodge, MT.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Deer Lodge-City-County Airport, Deer Lodge, MT.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM MT E5 Deer Lodge, MT [New]

Deer Lodge-City-County Airport, MT
(Lat. 46°23′16″ N., long. 112°45′54″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of the Deer Lodge-City-County Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 46°41′00″ N., long. 114°08′00″ W.; to lat. 47°03′00″ N., long. 113°33′00″ W.; to lat. 46°28′00″ N., long. 112°15′00″ W.; to lat. 45°41′00″ N., long. 112°13′00″ W.; to lat. 45°44′00″ N., long. 113°03′00″ W.; thence to the point of origin.

Issued in Seattle, Washington, on July 10, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–17282 Filed 7–16–12; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 39

RIN 3038–AD47

Clearing Exemption for Certain Swaps Entered Into by Cooperatives

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is proposing a rule pursuant to its authority under Section 4(c) of the Commodity Exchange Act (CEA) allowing cooperatives meeting certain conditions to elect not to submit for clearing certain swaps that such cooperatives would otherwise be required to clear in accordance with Section 2(h)(1) of the CEA.

DATES: Comments must be received on or before August 16, 2012.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD47, by any of the following methods:

Commission Web Site: http://comments.cftc.gov. Follow the instructions for submitting comments through the Web site.

Mail: David A. Stawick, 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. ''Exempt Cooperatives'' must be clearly indicated on all comment submissions. 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 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 established procedures in CFTC Regulation 145.9.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of a 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.

FOR FURTHER INFORMATION CONTACT: Erik F. Remmler, Associate Director, 202–418–7630, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

I. Background

The CEA, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''),[2] establishes a comprehensive new regulatory framework for swaps. The CEA requires a swap: (1) To be submitted for clearing through a derivatives clearing organization (DCO) if the Commission has determined that the swap is required to be cleared, unless an exception to the clearing requirement applies; (2) to be reported to a swap data repository (SDR) or the Commission; and (3) if such swap is subject to a clearing requirement, to be executed on a designated contract market (DCM) or swap execution facility (SEF), unless no DCM or SEF has made the swap available to trade.

Section 2(h)(1)(A) of the CEA establishes a clearing requirement for swaps, providing that ''it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a [DCO] that is registered under [the CEA] or a [DCO] that is exempt from registration under [the CEA] if the swap is required to be cleared.'' [3] However, Section 2(h)(7)(A) of the CEA provides that the clearing requirement of Section 2(h)(1)(A) shall not apply to a swap if one of the counterparties to the swap: ''(i) is not a financial entity; (ii) is using swaps to hedge or mitigate commercial risk; and (iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps'' (referred to hereinafter as the ''end-user exception'').[4] The Commission has promulgated § 39.6 to implement certain provisions of Section 2(h)(7). Accordingly, any swap that is required to be cleared by the Commission pursuant to Section 2(h)(2) of the CEA must be submitted to a DCO for clearing by the counterparties unless the conditions of § 39.6 are satisfied.

Congress adopted the end-user exception in Section 2(h)(7) of the CEA to permit certain non-financial companies to continue using non-cleared swaps to hedge risks associated with their underlying businesses, such as manufacturing, energy exploration, farming, transportation, or other commercial activities. Additionally, in Section 2(h)(7)(C)(ii) of the CEA, the Commission was directed to ''consider whether to exempt from the definition of 'financial entity' small banks, savings associations, farm credit system institutions and credit unions including:

(I) Depository institutions with total assets of $10,000,000,000 or less;

(II) Farm credit system institutions with total assets of $10,000,000,000 or less; or

(III) Credit unions with total assets of $10,000,000,000 or less.''

In § 39.6(d), the Commission identifies which financial entities are small financial institutions and establishes an exemption for these small financial institutions pursuant to Section 2(h)(7)(C)(ii) (the ''small financial institution exemption''). The small financial institution exemption largely adopts the language of Section 2(h)(7)(C)(ii) providing for an exemption for the types of Section 2(h)(7)(C)(ii) institutions having total assets of $10 billion or less.

On December 23, 2010, the Commission published for public comment a notice of proposed rulemaking (NPRM) for § 39.6.[5] Several parties that commented on the § 39.6 NPRM recommended that the Commission provide relief from clearing for cooperatives.[6] These commenters primarily reasoned [7] that the member ownership nature of cooperatives and the fact that cooperatives act on behalf of members that are non-financial entities or small financial institutions justified an extension of the end-user exception to the cooperatives. In effect, they proposed that because a cooperative acts in place of its members when facing the larger financial markets on behalf of the members, the end-user exception that would be available to a cooperative's members should pass through to the cooperative. Accordingly, if the members themselves could elect the end-user exception, then the Commission should permit the cooperatives to do so as well.

However, Section 2(h)(7) of the CEA does not differentiate cooperatives from other types of entities and therefore, cooperatives that are ''financial entities,'' as defined in Section 2(h)(7)(i) of the CEA, would be prohibited from electing the end-user exception unless they qualify for the small financial institution exemption. Some commenters recommended including cooperatives that are ''financial entities'' with total assets in excess of $10 billion in the small financial institution exemption.[8] However, as explained in greater detail in the final release for § 39.6, Section 2(h)(7)(C)(ii) of the CEA focused on asset size and not on the structure of the financial entity. Accordingly, only cooperatives that are financial entities with total assets of $10 billion or less can qualify as small financial institutions.

Notwithstanding the foregoing, the Commission recognizes that the member ownership structure of cooperatives and the merits of effectively passing through the end-user exception available to members to the cooperative warrant consideration. Accordingly, the Commission is using the authority provided in Section 4(c) of the CEA to propose § 39.6(f), which would permit cooperatives that meet certain qualifications to elect not to clear certain swaps that are otherwise

[1] 17 CFR 145.9. Commission regulations may be accessed through the Commission's Web site, *http://www.cftc.gov*.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010), available at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm*.

[3] *See* Section 2(h)(1)(A) of the CEA, 7 U.S.C. 2(h)(1)(A).

[4] *See* Section 2(h)(7)(A) of the CEA, 7 U.S.C. 2(h)(7)(A).

[5] *See* 75 FR 80747 (Dec. 23, 2010).

[6] *See, e.g.,* Agricultural Leaders of Michigan (ALM), The Farm Credit Council (FCC), Allegheny Electric Cooperative, Inc. (AEC), Garkane Energy Cooperative, Inc. (GEC), National Council of Farmer Cooperatives, Dairy Farmers of America, and National Rural Utilities Cooperative Finance Corporation (CFC). All comments referred to in this NPRM were comments received on the § 39.6 NPRM and can be found on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=937*.

[7] Other reasons given for providing an exemption from clearing for cooperatives, including risk considerations, are discussed below.

[8] *See, e.g.,* FCC, CFC, AEC, ALM, and GEC.

required to be cleared pursuant to Section 2(h)(1)(A) of the CEA (hereinafter referred to as the ''cooperative exemption'').

II. Cooperatives

Cooperatives that are ''financial entities'' as defined in Section 2(h)(7)(C)(i) of the CEA generally serve as the collective asset liability manager for their members. In this role, the cooperatives face the financial markets on behalf of their members. For example, they borrow money on a wholesale basis and then lend those funds to their members to meet their funding needs at a lower cost than would otherwise be available to the members individually. The commenters on the § 39.6 NPRM noted that financial cooperatives also enter into swaps with members primarily in connection with originating loans to the members for the purpose of hedging interest rate risk associated with the loans.[9] The cooperatives also enter into swaps with other financial entities, typically Swap Dealers (''SDs'') or Major Swap Participants (''MSPs''), to hedge the risks associated with the swaps they execute with their members or to hedge risks associated with their wholesale borrowing activities. The cooperatives use their size and resources on behalf of their members to provide more efficient financing and hedging than the members might achieve on their own.

Several commenters also noted that financial cooperative swap activities in connection with loans to members pose less risk to the financial system.[10] The cooperatives often enter into swaps with other financial institutions, typically on a matched book basis, to hedge the underlying risk of those member swaps. According to commenters, such matched book swaps pose less risk to the cooperatives because the market risk is largely passed through. Similar comments were made with respect to small financial institutions and the Commission acknowledged this as one reason for adopting the small financial institution exemption.

Some cooperatives have more than $10 billion in total assets, but act on behalf of members that are non-financial entities, small financial institutions, or other cooperatives whose members consist of such entities.[11] For example, there are four Farm Credit System (FCS) banks chartered under Federal law, each of which has assets in excess of $10 billion. The FCS banks are cooperatives primarily owned by their cooperative associations.[12] The Farm Credit Act authorizes the banks ''to make loans and commitments to eligible cooperative associations.'' [13] The FCS association members are, in turn, authorized to make loans to farmers and ranchers, rural residents, and persons furnishing farm-related services.[14] In effect, FCS bank cooperatives lend to FCS associations, which lend to farmers, and farmers own the FCS associations, which own the FCS banks. In addition to the example of the FCS banks as provided in Federal law, other cooperatives formed under Federal and state laws also have a similar entity structure in that they are owned by their members and they exist primarily to serve those members.

III. The Proposed Cooperative Exemption Rule

A. Introduction

In proposing an exemption for certain swaps entered into by cooperatives that are financial entities, the Commission is very much aware that central clearing of swaps is a primary focus of Title VII of the Dodd-Frank Act. Central clearing mitigates financial system risks that result from swaps and any exemption therefrom should be narrowly drawn to minimize the impact on the risk mitigation benefits of clearing and should also be in line with the end-user exception requirements of Section 2(h)(7) of the CEA. Accordingly, the Commission has sought to narrow the cooperative exemption appropriately.

B. Regulation 39.6(f)(1). Definition of Exempt Cooperative

The proposed rule would apply only to cooperatives that are financial entities as defined in Section 2(h)(7)(C)(i) of the CEA. The end-user exception is generally available to commercial (i.e. non-financial) cooperatives, or financial cooperatives that meet the requirements of the small financial institution exemption, that are seeking an exception for swaps that hedge or mitigate commercial risk.

Proposed paragraph (f)(1) would provide that each member of the cooperative seeking to elect the cooperative exemption must be a non-financial entity, a financial institution to which the small financial institution exemption applies, or itself a cooperative each of whose members fall into those categories. This provision would limit the cooperative exemption to cooperatives whose members are entities that could elect the end-user exception themselves. With this provision, the Commission is assuring that the cooperative exemption does not become overly broad and available to cooperatives with members that are non-exempt financial entities as defined in Section 2(h)(7)(C) of the CEA.[15]

C. Regulation 39.6(f)(2). Swaps to Which the Cooperative Exemption Applies

Proposed paragraph (f)(2)(i) limits application of the cooperative exemption to swaps entered into with members of the exempt cooperative in connection with originating loans [16] for members or swaps entered into by exempt cooperatives that hedge or mitigate risks associated with member loans or member loan-related swaps. This provision assures that the cooperative exemption is only used as a pass through for swaps with members who would themselves be able to elect the end-user exception and for swaps that hedge or mitigate risk in connection with member loans and swaps as would be required by Section 2(h)(7)(A)(ii) of the CEA for those member swaps. The primary rationale for the cooperative exemption is based on the unique relationship between cooperatives and their member owners. Expanding this exemption to include swaps with non-member entities with which a cooperative may do business (other than swaps used to hedge risks related to member loans or swaps) would go beyond the purpose of the exemption, which is to pass the member's end-user exception through to the cooperative because of the unique member-owner structure of cooperatives. Furthermore, allowing cooperatives to enter into non-cleared swaps with non-members or swaps that serve purposes other than hedging member loans or swaps would give the cooperatives, which are large financial entities, a market advantage over their competitors that is not justified by their cooperative structure or the provisions of the Dodd-Frank Act.

Additionally, for the cooperative exemption to benefit all members of cooperatives who would otherwise be able to elect the end-user exception themselves, the proposed exemption would be available to all qualifying

[9] *See, e.g.,* FCC, CFC, AEC, ALM, and GEC.

[10] *See, e.g.,* FCC, CFC, AEC, ALM, and GEC.

[11] *See, e.g.,* FCC, CFC, AEC, ALM, and GEC.

[12] *See* 12 U.S.C. 2124(c) (providing that ''[v]oting stock may be issued or transferred and held only by * * * cooperative associations eligible to borrow from the banks'').

[13] *Id.* § 2128(a).

[14] *See id.* § 2075.

[15] For example, the cooperative exemption would not be available to the Federal Home Loan Banks, whose membership includes financial entities that are not small financial institutions.

[16] The meaning of ''in connection with originating a loan'' is similarly used in the definition of swap dealer in § 1.3(ggg) of the CEA. *See* 77 FR 30596, 30744 (May 23, 2012). For purposes of consistency, that meaning is incorporated in the cooperative exception rule.

cooperatives, including those with total assets greater than $10 billion.[17] The Commission remains mindful that larger financial institutions pose greater risk to the financial system than small financial institutions, such as those identified in Section 2(h)(7)(C)(ii) of the CEA, because larger financial institutions are more likely to be interconnected with a greater number of market participants and therefore more likely to transfer risk widely. In keeping with this concern and in recognition of the larger asset size of cooperatives that will be able to use the cooperative exemption, the Commission, in its proposal, is limiting the cooperative exemption to swaps in connection with member loans. Several commenters who requested an exemption for cooperatives justified the request in part on the basis that cooperatives principally use swaps in connection with originating loans to members. These commenters noted that such swaps are relatively low risk. To minimize the risk a cooperative exemption might pose to the financial system, the proposed rule would limit the exemption to swaps in connection with originating loans to members and swaps used by the cooperatives to hedge or mitigate risks related to member loans or risks arising from swaps entered into with members related to such loans.

D. Regulation 39.6(f)(3). Reporting

Under Section 4(c) of the CEA, the Commission can subject such exemptive relief to appropriate terms and conditions.[18] To this end, the Commission believes it is appropriate to impose certain reporting requirements on any entities that may be exempted from the clearing requirement by this rule. These reporting requirements are effectively identical to the reporting requirements for the end-user exception. For the end-user exception, Section 2(h)(7)(A)(iii) of the CEA requires that one of the counterparties to the swap must notify ''the Commission in a manner set forth by the Commission how it generally meets its financial obligations associated with entering into non-cleared swaps.'' Regulation 39.6(b) implements Section 2(h)(7)(A)(iii) by requiring one of the counterparties (the ''reporting counterparty'') to provide, or cause to be provided, to a registered SDR, or if no registered SDR is available, to the Commission, information about how the counterparty electing the exception generally expects to meet its financial obligations associated with non-cleared swaps. In addition, § 39.6(b) requires the reporting counterparty to provide certain information that the Commission will use to monitor compliance with, and prevent abuse of, the end-user exception. The reporting counterparty would be required to provide the information at the time the electing counterparty elects the end-user exception.

Proposed § 39.6(f)(3) would require the same reporting required for the end-user exception whenever the cooperative exemption is elected for the same reasons. For purposes of regulatory consistency, § 39.6(f)(3) incorporates the provisions of § 39.6(b) with only those changes needed to apply the provisions to the cooperative exemption.

IV. Section 4(c) of the Commodity Exchange Act

Section 4(c)(1) of the CEA provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission, by rule, regulation or order, after notice and opportunity for hearing, may exempt any agreement, contract, or transaction, or class thereof, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to the agreement, contract, or transaction, from the contract market designation requirement of Section 4(a) of the CEA, or any other provision of the CEA other than certain enumerated provisions.[19] Through this exemptive regulation, the Commission proposes that cooperatives meeting certain conditions are the class of persons that should be exempted from the clearing requirement for certain types of swaps. As discussed in more detail above, such cooperatives act on behalf of their members in certain financial matters and to that extent, the proposed rule effectively provides for passing through the end-user exception available to such cooperatives' members to the cooperatives.

The end-user exception provided in Section 2(h)(7) of the CEA is not available to an entity that is a ''financial entity'' as defined in Section 2(h)(7)(C)(i) unless such entity is exempt from the definition because it is a small financial institution as provided in Section 2(h)(7)(C)(ii) of the CEA and § 39.6(d). As explained in greater detail in the final release for § 39.6, Section 2(h)(7)(C)(ii) of the CEA focused exclusively on asset size for determining what financial entities could qualify for the small financial institution exemption. Furthermore, the $10 billion limit identified in that section guides the Commission's consideration of the small financial institution exemption absent convincing evidence that a different asset level is warranted. Section 2(h)(7)(C)(ii) does not provide special consideration for cooperatives that meet the definition of ''financial entity'' and therefore the asset size limit applies to them.

Cooperatives have a member ownership structure in which the cooperatives exist to serve their member owners and do not act for their own profit.[20] Furthermore, the member owners of the cooperative collectively have full control and governance of the cooperative. In a real sense, the cooperative is not separable from its member owners. As described above, some cooperatives provide financial services to their members including lending and providing swaps to members and hedging those activities with other financial entities such as SDs. The memberships of some of these cooperatives consist of entities that each could elect the end-user exception if acting alone. However, some of those cooperatives meet the definition of ''financial entity'' and have assets in excess of $10 billion, and therefore the end-user exception is unavailable to them. Accordingly, the cooperative members would not benefit from the end-user exception if they use their cooperative as the preferred vehicle for hedging commercial risks in the greater financial marketplace. In light of this, the Commission is exercising its authority under Section 4(c) of the CEA to propose § 39.6(f) and establish the cooperative exemption.

The Commission believes that there are benefits to having cooperatives execute risk hedging or mitigation strategies with, and on behalf of, their members. The FCC has commented that ''[t]o provide tailored financing products for farmers and farm-related businesses, Farm Credit System institutions rely on the safe use of derivatives to manage interest rate, liquidity, and balance sheet risk, primarily in the form of interest rate swaps.'' The FCS institutions include the four FCS cooperative banks, each of which has total assets in excess of $10 billion. Using the substantial, finance-focused resources of the cooperative to

[17] Some financial cooperatives such as CoBank, and AgriBank FCB, have total assets in excess of $50 billion.

[18] *See* Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1).

[19] 7 U.S.C. 6(c).

[20] For example, the CFC was formed as a nonprofit corporation under the District of Columbia Cooperative Association Act of 1940 to arrange financing for its members and their patrons and for the ''primary and mutual benefit of the patrons of the Association and their patrons, as ultimate consumers.'' CFC Articles of Incorporation, Art. 1.

undertake hedging activities for the numerous members of the cooperative promotes greater economic efficiency and lower costs for the members. The Commission believes that the use of swaps in this manner by cooperatives on behalf of their members constitutes financial innovation that is beneficial for the public.

In light of the foregoing, the Commission believes that the adoption of proposed § 39.6(f) and its attendant terms and conditions would promote responsible economic and financial innovation and fair competition.

The Commission requests public comment on whether the proposed regulation satisfies the requirements for exemption under Section 4(c) of the CEA and on all aspects of the proposed regulation. The Commission welcomes any quantifiable data and analysis that would assist the Commission in this rulemaking. In particular, the Commission is requesting comment on the following questions:

- Has the Commission correctly limited the exemption to cooperatives in which each member is: A non-financial entity, a financial entity to which the small financial institution exemption applies, or a cooperative each of whose members fall into those categories?
- Are there cooperatives in which not all members are a non-financial entity, a financial entity to which the small financial institution exemption applies, or a cooperative each of whose members fall into those categories? If so, should the proposed definition of ''exempt cooperative'' be modified to include them? Would such inclusion undermine the narrow pass through focus of the rule? Is it possible that financial entities that do not currently operate as cooperatives and for which the clearing requirement is intended could reorganize or create cooperatives to take advantage of the proposed cooperative exemption? If so, how could the proposed rule be modified to prevent that from happening? Should affiliates of financial entities identified in Sections 2(h)(7)(C)(i)(I) through (VII) of the CEA be expressly excluded from the definition of exempt cooperative?
- The Commission invites comment on whether the types of swaps for which the cooperative exemption may be elected should be expanded or further limited and why. If so, please describe such expansion or limitation specifically. Is the provision allowing for swaps that hedge or mitigate risk ''related to loans to members'' too limited or not limited enough? What clarifying language could be added to more effectively identify such swaps that would be consistent with the rationale used for the proposed rule regarding the cooperative standing in place of its members when entering into hedging swaps with other financial entities? Are there practical or other considerations in identifying which swaps serve to hedge or mitigate the risk of member loans or member loan related swaps?
- Are there additional or alternative considerations that should be reviewed by the Commission regarding the proposed cooperative exemption?

V. Consideration of Costs and Benefits

A. Background

In the wake of the financial crisis of 2008, Congress adopted the Dodd-Frank Act, which, among other things, requires the Commission to determine whether a particular swap, or group, category, type or class of swaps, shall be required to be cleared.[21] Specifically, Section 723(a)(3) of the Dodd-Frank Act amended Section 2(h)(1)(A) of the CEA to make it ''unlawful for any person to engage in a swap unless that person submits such swap for clearing to a [DCO] that is registered under the CEA or a [DCO] that is exempt from registration under [the CEA] if the swap is required to be cleared.'' This clearing requirement is designed to reduce counterparty risk associated with swaps and, in turn, mitigate the potential systemic impact of such risk and reduce the likelihood for swaps to cause or exacerbate instability in the financial system.[22] It reflects a fundamental premise of the Dodd-Frank Act: the use of properly regulated and functioning central clearing can reduce systemic risk.

Notwithstanding the benefits of clearing, Section 2(h)(7) of the CEA provides the end-user exception if one of the swap counterparties: ''(i) is not a financial entity; (ii) is using swaps to hedge or mitigate commercial risk; and (iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.'' Section 2(h)(7)(C)(ii) of the CEA directs the Commission to consider making the end-user exception available to small banks, savings associations, credit unions, and farm credit institutions, including those institutions with total assets of $10 billion or less, through an exemption from the definition of ''financial entity.''[23] In § 39.6(d), the Commission establishes the small financial institution exemption for these institutions. The small financial institution exemption largely adopts the language of Section 2(h)(7)(C)(ii) providing for an exemption for the institutions identified in Section 2(h)(7)(C)(ii) that have total assets of $10 billion or less.

Through proposed § 39.6(f), the Commission would use the authority provided in Section 4(c) of the CEA to permit ''exempt cooperatives,'' as defined in § 39.6(f)(1), to elect not to clear certain swaps that are otherwise required to be cleared pursuant to Section 2(h)(1)(A) of the CEA, notwithstanding that these cooperatives are financial entities that do not qualify for the small financial institution exemption because their assets exceed $10 billion. Specifically, an ''exempt cooperative'' is a cooperative under Federal or state law that is a financial entity each member of which is eligible for the end-user exception, or is another cooperative composed of members, each of whom is eligible for the end-user exception. An exempt cooperative would not be required to clear swaps with members in connection with member loans, or swaps used by the exempt cooperative to hedge or mitigate risk arising in connection with such swaps with members or loans to members.

On December 23, 2010, the Commission published for public comment an NPRM for § 39.6 proposing the end-user exception.[24] Several parties that commented on the § 39.6 NPRM recommended that the Commission provide relief from clearing for cooperatives. These commenters reasoned[25] that the member ownership nature of cooperatives and the fact that they act on behalf of members that are non-financial entities or small financial

[21] *See* Section 2(h)(2) of the CEA, 7 U.S.C. 2(h)(2).

[22] When a bilateral swap is moved into clearing, the DCO becomes the counterparty to each of the original participants in the swap. This standardizes counterparty risk for the original swap participants in that they each bear the same risk attributable to facing the DCO as counterparty. In addition, DCOs exist for the primary purpose of managing credit exposure from the swaps being cleared and therefore DCOs are effective at mitigating counterparty risk through the use of risk management frameworks. These frameworks model risk and collect defined levels of initial and variation margin from the counterparties that are adjusted for changing market conditions and use guarantee funds and other risk management tools for the purpose of assuring that, in the event of a member default, all other counterparties remain whole. DCOs have demonstrated resilience in the face of past market stress. Most recently, they remained financially sound and effectively settled positions in the midst of turbulent events in 2007–2008 that threatened the financial health and stability of many other types of entities.

[23] *See* CEA 2(h)(7)(C)(ii).

[24] *See* 75 FR 80747.

[25] Other reasons given for providing an exemption from clearing for cooperatives, including risk considerations, are discussed above in this NPRM.

institutions justified an extension of the end-user exception to the cooperatives. In effect, the commenters posit that because a cooperative takes the place of its members to face the larger financial markets on behalf of the members, the end-user exception that would be available to a cooperative's members should pass through to the cooperative. Accordingly, if the members themselves could elect the end-user exception, then the Commission should permit the cooperatives to do so as well.

The Commission is proposing such an exemption herein for certain cooperatives, and it is the costs and benefits of this exemption that the Commission considers in the discussion that follows.

B. Statutory Requirement To Consider the Costs and Benefits of the Commission's Action: CEA Section 15(a)

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 the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission considers the costs and benefits resulting from its own discretionary determinations with respect to the Section 15(a) factors.

The costs and benefits of the Commission's action in this rulemaking are measured against the level of costs and benefits that would exist absent this rulemaking. Absent this rulemaking, all cooperatives that are financial entities as defined in Section 2(h)(7)(C)(i) of the CEA and which are not otherwise exempt from that definition would be unable to elect the end-user exception pursuant to Section 2(h)(7)(A)(i) of the CEA, which specifies that to elect the end-user exception a counterparty must not be a financial entity. Thus, the foundation against which this rulemaking's costs and benefits are measured is the statutory requirement that cooperatives within the definition of financial entities and with assets exceeding $10 billion, remain subject to the clearing requirement of Section 2(h)(1)(A) of the CEA. Additionally, the Commission considers the rulemaking's costs and benefits relative to alternatives besides that of abstaining from action.

As discussed in more detail below, the Commission is able to estimate certain reporting costs. The dollar estimates are offered as ranges with upper and lower bounds, which is necessary to accommodate the uncertainty that surrounds them. The Commission notes that the most likely outcome with respect to each estimate is a cost above the lower bound and below the upper bound.

The discussion below considers the rule's costs and benefits as well as alternatives to the rule. The discussion concludes with a consideration of the rule's costs and benefits in light of the five factors specified in Section 15(a) of the CEA.

C. Costs and Benefits of the Proposed Rule

1. Costs and Benefits to Electing Entities

Without this proposed 4(c) rule, cooperatives meeting the criteria of the proposed exemption would have to engage in cleared swaps pursuant to Section 2(h)(1)(A) of the CEA when they are either: (1) Transacting with a member who does not elect the end-user exception, or (2) transacting with another financial entity to hedge or mitigate risk related to loans with members or swaps with members related to such loans. Extending the end-user exception to such entities in these circumstances benefits them in that they will not have to bear the costs of clearing that each may incur. These costs include certain capital costs and fees associated with clearing.[26]

Regarding fees, DCOs typically charge FCMs an initial transaction fee for each of the FCM customers' swaps that are cleared, as well as an annual maintenance fee for each of their customers' open positions. For example, not including customer-specific and volume discounts, the transaction fees for interest rate swaps at CME range from $1 to $24 per million notional amount and the maintenance fees are $2 per year per million notional amount for open positions.[27] LCH transaction fees for interest rate swaps range from $1 to $20 per million notional amount, and the maintenance fee ranges from $5 to $20 per swap per month, depending on the number of outstanding swap positions that an entity has with the DCO.[28]

It is within the FCM's discretion to determine whether or how to pass these fees on to their customers, but the Commission believes that FCMs generally pass these fees straight through to their customers. To the extent that this is true, allowing exempt cooperatives to elect not to clear swaps that meet the requirements of the proposed rule will result in the exempt cooperatives not having to pay such clearing related fees with respect to those swaps. The Commission requests comment on whether and how FCMs pass DCO fees on to their customers, and to what extent this creates clearing-related costs for exempt cooperatives entering into swaps meeting the conditions proposed in this rule. If possible, please provide quantitative information related to this issue.

The proposed rule may also impact the capital that cooperatives that are financial entities are required to hold with respect to their swap positions pursuant to prudential regulatory capital requirements. As stated above, when compared to a situation in which the proposed exemption is not available, the proposed exemption will reduce the number of swaps that eligible cooperatives are required to clear. The Commission anticipates that reducing the number of swaps that such cooperatives clear will impact their capital ratios in such a way as to reduce the amount of capital that eligible cooperatives are required to hold. This creates both benefits and costs. Regarding benefits, this increases the cooperative's lending capacity, enabling them to lend more to their members without retaining or raising additional capital. As for costs, this allows eligible cooperatives to become more highly leveraged, which increases the counterparty risk that they pose to their members and other market participants with whom they transact. The Commission invites comment on the effects of required clearing on the capital requirements for financial cooperatives. To the extent possible, please quantify the anticipated effect of the proposed exemption on relevant capital ratios as well as the costs and benefits resulting from changes in the cooperatives' leverage and lending capacity.

[26] Transacting swaps bilaterally is not without cost, of course, and the Commission notes that uncleared swaps have associated costs as well. For example, when a market participant faces a swap dealer or other counterparty in an uncleared swap, the uncleared swap contains an implicit line of credit upon which the market participant effectively draws when its swap position is out of the money. Counterparties charge for this implicit line of credit in the spread they offer on uncollateralized, uncleared swaps.

[27] *See* CME pricing charts at: *http://www.cmegroup.com/trading/cds/files/CDS-Fees.pdf; http://www.cmegroup.com/trading/interest-rates/files/CME-IRS-Customer-Fee.pdf;* and *http://www.cmegroup.com/trading/interest-rates/files/CME-IRS-Self-Clearing-Fee.pdf.*

[28] *See* LCH pricing for clearing services related to OTC interest rate swaps at: *http://www.lchclearnet.com/swaps/swapclear_for_clearing_members/fees.asp.*

Clearing swaps creates an obligation for counterparties to the cleared swap to post both initial and variation margin related to that position. A clearing exemption may reduce the amount of capital that an entity has to post in order to cover its positions, particularly if that entity does not post margin directly to its counterparties with respect to some or all of its uncleared positions.[29] However, in the case of unmargined swaps, dealers typically account for the counterparty risk that they face in the absence of margin by adjusting the terms of the swap. The additional cost embedded in an unmargined swap to account for additional counterparty risk is likely to be roughly equivalent to the cost associated with a line of credit that would be used to post margin for that position if it were cleared.[30] The Commission, therefore, believes that this is an implicit cost in unmargined swaps that is made explicit by clearing swaps, rather than a new cost created by clearing. Therefore the exemption is not expected to significantly alter exempt cooperatives' costs in this area. The Commission invites comment regarding the expected effect of this proposed exemption on the amount and cost of collateral posted by entities eligible for the exemption. Wherever possible, please quantify costs and benefits.

Regarding reporting, cooperatives electing the cooperative exemption will have some reporting costs. The proposed rule requires that exempt cooperatives adhere to the reporting requirements of § 39.6(b). For each swap where the exemption is elected, either the cooperative or its counterparty (if the counterparty is an SD or MSP) must report: (1) That the election of the exemption is being made; (2) which party is the electing counterparty; and (3) certain information specific to the electing counterparty unless that information has already been provided by the electing counterparty through an annual filing. The third set of information comprises data that is likely to remain relatively constant for many, but not all, electing counterparties and therefore, does not require swap-by-swap reporting and can be reported less frequently. In addition, for entities that are registered with the SEC, the reporting party will also be required to report: (1) The SEC filer's central index key number; and (2) that an appropriate committee of the board of directors has approved the decision for that entity to enter into swaps that are exempt from the requirements of Sections 2(h)(1) and 2(h)(8) of the Act.

When entering into swaps with members and electing the exemption, exempt cooperatives will be responsible to report this information. When cooperatives enter into swaps with SDs or MSPs, the SDs or MSPs will be responsible to report this information. Entities would bear costs related to the personnel hours committed to reporting the required information. As described below in the subsection entitled ''Number of Exempt Cooperatives and Swaps'' in the section entitled ''Paperwork Reduction Act,'' the Commission estimates that approximately ten cooperatives will be eligible for the cooperative exemption. For purposes of estimating costs, the Commission assumes that each potential exempt cooperative is likely to function as the reporting counterparty for at least some of their exempted swaps in any given year because they would be responsible for reporting when transacting exempted swaps with members.

A review of information provided for five cooperatives that likely would be exempt cooperatives showed a range of swap usage from none to as many as approximately 200 swaps a year with most entering into less than 50 swaps a year. Using the high end of reported swaps for the five cooperatives for which information was available, an estimate of 50 swaps per year was calculated. The Commission believes this estimate is high because some of the reported swaps may not meet the requirements of the proposed rule and several cooperatives for which information was not available to the Commission likely undertake little if any, swap activity. However, for purposes of the cost calculations, the Commission assumes that each of the ten potential exempt cooperatives will enter into 50 swaps each year. Accordingly, we estimate that exempt cooperatives may elect the cooperative exemption for 500 swaps each year. The Commission invites comment regarding the estimated number of swaps conducted by each cooperative that would be eligible under this proposed rule. In addition, the Commission invites comment regarding the per cooperative average and total notional value of swaps that would be eligible under the cooperative exemption.

For each exempted swap, to comply with the swap-by-swap reporting requirements in §§ 39.6(b)(1)(i) and (ii), the reporting counterparty will be required to check one box indicating the exemption is being elected and complete one field identifying the electing counterparty. The Commission expects that this information will be entered into the appropriate reporting system concurrently with additional information that is required under the CEA and other Commission regulations promulgated thereunder. Therefore, each reporting counterparty is likely to spend 15 seconds to two minutes per transaction in incremental time entering the swap-by-swap information into the reporting system, or in the aggregate, 1.5 hours to 17 hours per year for all 500 estimated swaps. A financial analyst's average salary is $208/hour, which corresponds to approximately $1–$7 per transaction or in aggregate, $300–$3,500 per year for all 500 estimated swaps.[31]

Regulation 39.6(b)(1)(iii) allows for certain counterparty specific information identified therein to be reported either swap-by-swap by the reporting counterparty or annually by the electing counterparty. For the end-user exception for which that section also applies, the alternative options may be useful in instances where electing counterparties enter into very few swaps each year and the reporting counterparties will report this information for them on a swap-by-swap basis. However, for the cooperative exemption, the exempt cooperative is the electing counterparty and will also likely be the reporting counterparty for swaps entered into with members. Furthermore, the Commission expects that, assuming the cooperative is the reporting counterparty, the time burden for the first swap entered into by an exempt cooperative in collecting and reporting the information required by § 39.6(b)(1)(iii) will be approximately the same as the time burden for collecting and reporting the information for the annual filing. Given the cost equivalence for annual reporting to reporting a single swap if the exempt cooperative is both the electing and reporting counterparty, the Commission assumes that all ten exempt cooperatives will make an annual filing

[29] This assessment assumes similar levels of netting and compression in both uncleared and cleared portfolios. These assumptions are not necessarily valid in all cases. Moving swaps into clearing can—depending on the number of counterparties a market participant originally faced with uncleared swaps, the margin agreements in place with those counterparties, and the number of DCOs that eventually clear those positions—reduce the amount of margin that an entity has to post.

[30] Mello, Antonio S., and John E. Parsons, ''Margins, Liquidity, and the Cost of Hedging.'' MIT Center for Energy and Environmental Policy Research, May 2012.

[31] Wage estimates are taken from the SIFMA ''Report on Management and Professional Earnings in the Securities Industry 2011.'' Hourly wages are calculated assuming 1,800 hours per year and a multiplier of 5.35 to account for overhead and bonuses. In light of the challenges of developing precise estimates, the results of calculations have been rounded.

of the information required for § 39.6(1)(iii). The Commission estimates that it will take an average of 30 minutes to 90 minutes to complete and submit the annual filing. The average hourly wage for a compliance attorney is $390, which means that the annual per cooperative cost for the filing is likely to be between $200 and $590. If all ten eligible cooperatives were to undertake an annual filing, the aggregate cost would be $2,000 to $5,900.

Furthermore, when an exempt cooperative is not functioning as the reporting counterparty (i.e. when transacting with a SD or MSP), it may, at certain times, need to communicate information to its reporting counterparties in order to facilitate reporting. That information may include, among other things, whether the electing counterparty has filed an annual report pursuant to § 39.6(b) and information to facilitate any due diligence that the reporting counterparty may conduct. These costs will likely vary substantially depending on the number of different reporting counterparties with whom an electing counterparty conducts transactions, how frequently the electing counterparty enters into swaps, whether the electing counterparty undertakes an annual filing, and the due diligence that the reporting counterparty chooses to conduct. Therefore, the Commission believes that it is difficult to estimate these costs reliably at this time. Nevertheless, the Commission estimates that non-reporting electing counterparties will incur between five minutes and ten hours of annual burden hours, or in the aggregate, between approximately one hour and 100 hours. The hourly wage for a compliance attorney is $390, which means that the annual aggregate cost for communicating information to the reporting counterparty is likely to be between $400 and $39,000. Given the unknowns associated with this cost estimate noted above, the Commission does not believe this wide range can be narrowed without further information.

2. Costs and Benefits for Counterparties to Electing Cooperatives

Reduced clearing of swaps by exempt cooperatives likely will increase counterparty risk for both exempt cooperatives and their counterparties. Cooperatives will be more exposed to financial instability in their counterparties, and conversely, the cooperatives' counterparties may be exposed to any instability that might develop within the exempt cooperatives. This could be problematic for an exempt cooperative if one of the dealers with which the cooperative has large uncleared positions experiences financial instability, or if groups of members whose financial strength may be highly correlated and whose aggregate uncleared positions with the cooperative are large, encounter financial challenges. Conversely, if an exempt cooperative becomes insolvent and its positions with a SD or MSP are substantial, it is possible that its uncleared positions could be large enough to create or exacerbate instability at the SD or MSP, and could also create significant exposure for the members the cooperative serves. In this way, financial instability at one of the cooperative's counterparties could adversely impact the other counterparties of that cooperative. However, these risks may be mitigated through negotiated collateral agreements between exempt cooperatives and their counterparties. The Commission understands that many swaps in the uncleared market are subject to such agreements.[32] The Commission invites comment on the size of exposures between potential exempt cooperatives and other financial entities, the size and number of positions between exempt cooperatives and their members, and the extent to which uncleared swaps between exempt cooperatives and financial entities, and transactions between exempt cooperatives and their members, are currently collateralized. Please quantify estimates, where possible.

In a similar vein, some members of exempt cooperatives are commercial entities that, in the absence of this exemption, could elect not to clear swaps by using the end-user exception. The proposed cooperative exemption does not affect the ability of those members to elect the end-user exemption, but it does constrain their ability to forego the end-user exception when entering into transactions with exempt cooperatives that are eligible for the proposed exemption. In other words, either the exempt cooperative or the member may elect not to clear the swap, and neither party may compel the other to clear the swap. To the extent that members are unconstrained in their choice of counterparties, this is not problematic. Members could still go to a SD or other financial entity, which has no clearing exemption election ability, to access the terms and counterparty protection that a cleared position provides. However, if members are constrained in their choice of counterparties (i.e. if they do not have sufficient size or experience to transact with a SD, or if they need the collateral that is already pledged with the loan to secure a corresponding swap) they will not be able to elect a cleared transaction when using swaps that are required to be cleared unless the cooperative agrees to clearing. The Commission invites comment regarding the extent to which this consideration represents a cost to members of cooperatives that would be eligible for the exemption under the criteria proposed in this rule. If possible, please quantify any such costs.

3. Costs and Benefits to the Public

The public generally has an interest in required clearing because of its potential to reduce counterparty risk among large, interconnected institutions, and to facilitate rapid resolution of outstanding positions held by such institutions in the event of their default. By narrowly crafting the proposed cooperative exemption to incorporate qualifying criteria limiting both the types of institutions and the types of swaps that are eligible, the Commission expects the proposed exemption to appropriately conserve this public interest. Moreover, for this narrow category of swaps proposed for exemption, the potential remains for exempt cooperatives and their counterparties to mitigate residual counterparty risk through negotiated collateral agreements. The Commission invites comment regarding the extent to which this proposed exemption would impose costs or provide benefits on the public, including the expected impact of negotiated collateral agreements. Please provide quantification where possible.

D. Costs and Benefits Compared to Alternatives

The proposed cooperative exemption includes two important limiting criteria. First, each member of a cooperative must independently be able to elect the end-user exception or be a cooperative whose members can elect the end-user exception. Second, the swaps for which exempt cooperatives may make use of the proposed rule only includes those entered into by the cooperative with its members in connection with originating loans or swaps that hedge or mitigate risks associated with such swaps or associated with member loans.

The Commission considered including cooperatives consisting of members that could not elect the end-user exception. Such an exemption would assist in ensuring that a greater number of cooperatives and their members are able to elect not to clear

[32] The 2012 ISDA Margin Survey indicates that 71% of all OTC derivatives transactions were subject to collateral agreements during 2011, but notes that the degree of collateralization may vary significantly depending on the type of derivative and counterparties entering into a transaction.

swaps. However, the Commission believes that such an exemption would significantly undermine Congress' intent to promote clearing and be inconsistent with the end-user exception provided for in Section 2(h)(7) of the CEA. This alternative could allow any large financial entities such as SDs or MSPs, which Congress clearly intended the clearing requirement to apply to without exception, to form cooperatives with other entities that would be exempt from the clearing requirement. By contrast, with the proposed provision, the Commission is assuring that the cooperative exemption does not become overly broad and available to cooperatives with members that are financial entities as defined in Section 2(h)(7)(C) of the CEA.

The Commission also considered exempting any swap transacted by an exempt cooperative. However, the Commission was concerned that financial entities such as SDs, MSPs, or non-member borrowers that are financial entities would be able to avoid clearing by entering into swaps through an exempt cooperative. For example, from a SD's perspective, taking a long position on a swap with another SD would require clearing. However, the two parties could have essentially the same economic arrangement if the first SD goes long on the swap with an exempt cooperative, and the second SD takes a short position on the same swap with the same exempt cooperative. The exempt cooperative would be even, and the two SDs would have created a synthetic swap that avoided the clearing requirement. The proposed provision avoids such a scenario by ensuring that the cooperative exemption is only used as a pass through for swaps with members who would themselves be able to elect the end-user exception and for swaps that hedge or mitigate risk in connection member loans or swaps as would be required by Section 2(h)(7)(A)(ii) of the CEA.

The Commission invites comment regarding the extent to which the requirements in the definition of exempt cooperative may be too restrictive for cooperatives that the commenter believes should have the benefit of the proposed cooperative exemption or are not restrictive enough to protect the public interest in requiring clearing of certain swaps. Similarly, the Commission invites comment on whether the limitation on the types of swaps for which the cooperative exemption may be elected should be expanded or further limited and why. Please describe such specific expansion or further limitation contemplated and the costs and benefits that could result therefrom.

E. Section 15(a) Factors

1. Protection of Market Participants and the Public

As described above, allowing exempt cooperatives to exempt certain swaps from required clearing will reduce the DCO and FCM clearing fees that such entities may otherwise bear. This, in turn, provides benefits to the members of exempt cooperatives, who would otherwise absorb such costs as they are passed through by the cooperatives to their members in the form of fees or less desirable spreads on swaps or loans conducted with the cooperative. In addition, the exemption may reduce the amount of capital that exempt cooperatives must allocate to margin accounts with their FCM.

The proposed rule is narrowly tailored to exempt only swaps that are associated with positions established in connection with loans made to customers, or that hedge or mitigate risk arising in connection with such member loans or swaps. Further, it is otherwise generally consistent with the requirements for the end-user exception as provided in Section 2(h)(7) of the CEA and § 39.6. Given the proposed cooperative exemption's limited scope and the remaining potential for exempt cooperatives and their counterparties to mitigate residual counterparty risk through negotiated collateral agreements, the Commission does not anticipate that the proposed rule would materially compromise protection of market participants and the public. The Commission requests comment on the extent to which the limitations on the entities and transactions eligible for the proposed exemption will limit risk to market participants and the public. If possible, please quantify relevant estimates.

2. Efficiency, Competitiveness, and Financial Integrity of Swap Markets

While the proposed rule would take swaps out of clearing, it limits any compromise of the financial integrity of the swap markets insomuch as it is narrowly tailored to include only cooperatives that are made up entirely of entities that could elect the end-user exception, and only swaps related to originating loans between the cooperative and such members. The Commission invites comment on the effects of the proposed rule on efficiency, competitiveness, and financial integrity of swap markets.

3. Price Discovery

Clearing, in general, encourages better price discovery because it eliminates the importance of counterparty creditworthiness in pricing swaps cleared through a given DCO. That is, by making the counterparty creditworthiness of all swaps of a certain type essentially the same, prices should reflect factors related to the terms of the swap, rather than the idiosyncratic risk posed by the entities trading it.[33] To the extent that the cooperative exemption reduces the number of swaps subject to required clearing, it will lessen the beneficial effects of required clearing for price discovery. However, the Commission assumes that the number of swaps eligible for this exemption, estimated above at 500 a year, will be a de minimis fraction of all those that are otherwise required to be cleared. The Commission invites comment on the effects of the proposed rule on price discovery.

4. Sound Risk Management Practices

To the extent that a swap is removed from clearing, all other things being constant, it is a detriment to a sound risk management regime. To the extent that exempt cooperatives enter into uncleared swaps on the basis of this proposed rule, it likely increases the amount of counterparty risk that exempt cooperatives and their counterparties face. For the public, it increases the risk that financial distress at one or more cooperatives could spread to other financial institutions with which those cooperatives have concentrated positions. However, as discussed above, this additional risk may be reduced by the presence of bilateral margin agreements, which the Commission believes are often used in the absence of clearing. Furthermore, the Commission believes that, given the small number of swaps that will be exempted from clearing as a result of the proposed rule, estimated above to be 500 each year, these risks to the public will be minimized. The Commission invites comment regarding the effect of the proposed rule on the risk exposure of the cooperatives meeting the criteria proposed in this rule, their counterparties, and the public. Where possible, please quantify any costs or benefits that are relevant.

[33] *See* Chen, K., et al. ''An Analysis of CDS Transactions: Implications for Public Reporting,'' September 2011, Federal Reserve Bank of New York Staff Reports, at 14.

5. Other Public Interest Considerations

The Commission has not identified any public interest considerations relevant to this proposed rule beyond those already noted above.

F. Public Comment on the Cost-Benefit Considerations

The Commission invites public comment on all aspects of the cost-benefit considerations. More specifically, the Commission also requests comment on the following.

Would a cooperative exemption have any adverse impact on competition?

Would a cooperative exemption have an impact on fees or other charges for any products and/or services?

Would a cooperative exemption result in efficiencies or other benefits not described in this NPRM?

Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act [34] (''RFA'') requires that agencies consider whether proposed rules will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis on the impact.

The proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would affect cooperatives, their members, and potentially the counterparties with whom they trade. These entities could be SDs, MSPs, and eligible contract participants (ECPs).[35] The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA. In that regard, the Commission has certified previously that SDs and MSPs are not small entities for purposes of the RFA.[36] The Commission is making a similar determination for purposes of this proposal. The proposed rules would also affect SDRs, which the Commission has similarly determined not to be small entities for purposes of the RFA. The Commission is making the same determination with respect to the proposed rules.

The Commission has previously determined that ECPs are not small entities for purposes of the RFA.[37] However, in its proposal of rule § 39.6, the Commission received a joint comment (''Electric Associations Letter'') from the National Rural Electric Cooperative Association, the American Public Power Association and the Large Public Power Council (the ''Associations'') asserting that certain members of the Associations may both be ECPs under the CEA and small businesses under the RFA.[38] These members of the Associations, as the Commission understands, have been determined to be small entities by the Small Business Administration (''SBA'') because they are ''primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and [their] total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' [39] The Electric Associations Letter states that the Associations' members are ''not financial entities'' and ''engage in swaps only to mitigate or hedge commercial risks.'' [40] Because the Associations' members that have been determined by the SBA to be small entities would be using swaps to hedge commercial risk, the Commission expects that they would be able to use the end-user exception from the clearing requirement and therefore would not be affected to any significant extent by this proposed exemption.

Accordingly, because nearly all of the entities that may be affected by the proposed cooperative exemption are not small entities, and because the few ECPs that have been determined by the SBA to be small entities are unlikely to be affected to any significant extent by the proposed exemption, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed regulation would not have a significant economic impact on a substantial number of small entities. The Commission invites public comment on this determination.

B. Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act (PRA) [41] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by 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 issued by the Office of Management and Budget (OMB). Certain provisions of this proposed rule would result in new collection of information requirements, within the meaning of the PRA, for exempt cooperatives. These new reporting requirements for exempt cooperatives are not currently covered by any existing OMB control number and OMB has not yet assigned a control number for this new collection. The Commission therefore is submitting this proposal to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

The title for this collection of information is ''Rule 39.6(f) Cooperative Clearing Exemption Notification.'' If adopted, this new collection of information would be mandatory for those parties availing themselves of the cooperative exemption. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR Part 145, ''Commission Records and Information.'' In addition, Section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

2. Information Provided by Reporting Entities

This proposed cooperative exemption rule would trigger certain reporting conditions under proposed § 39.6(f)(3) that must be satisfied for exempt cooperatives. These conditions are designed to notify the Commission when the exemption from the clearing requirements in Section 2(h)(1)(A) of the CEA is being elected, address Commission concerns regarding exempt cooperative swap risk, and provide the Commission with information necessary to regulate swap markets. In particular,

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

[35] It is possible that a cooperative or members thereof may not be ECPs. However, pursuant to Section 2(e) of the CEA, if a counterparty to a swap is not an ECP, then such swap must be entered into on, or subject to the rules of, a board of trade designated as a contract market under Section 5 of the CEA. All such swaps are required to be cleared by the board of trade. In effect all swaps entered into by a cooperative or a member that is not an ECP will need to be executed on a board of trade and therefore will be cleared.

[36] *See* 77 FR 30596, 30701 (May 23, 2012).

[37] *See* 66 FR 20740, 20743 (Apr. 25, 2001).

[38] *See* joint letter from EEI, NRECA, and ESPA, dated Nov. 4, 2011, (Electric Associations Letter), commenting on Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA, 76 FR 58186 (Sept. 20, 2011).

[39] Small Business Administration, Table of Small Business Size Standards, Nov. 5, 2010.

[40] *See* Electric Associations Letter, at 2.

[41] 44 U.S.C. 3501 *et seq.*

the reporting conditions in proposed § 39.6(f)(3), which requires compliance with reporting requirements under § 39.6(b) for swaps for which the cooperative exemption is elected, would establish new collection of information requirements within the meaning of the PRA. Additionally, exempt cooperatives may be required to supplement their reporting systems for purposes of complying with the proposed reporting requirements.

For each swap where the exemption is elected, either the cooperative or its counterparty (if the counterparty is an SD or MSP) must report: (1) That the election of the exemption is being made; (2) which party is the electing counterparty; and (3) certain information specific to the electing counterparty unless that information has already been provided by the electing counterparty through an annual filing. The third set of information comprises data that is likely to remain relatively constant for many, but not all, electing counterparties and therefore, does not require swap-by-swap reporting and can be reported less frequently. In addition, for entities that are registered with the SEC, the reporting party will also be required to report: (1) The SEC filer's central index key number; and (2) that an appropriate committee of the board of directors has approved the decision for that entity to enter into swaps that are exempt from the requirements of Section 2(h)(1)(A) of the CEA.

When entering into swaps with members and electing the exemption, exempt cooperatives will likely be responsible to report this information. When cooperatives enter into swaps with SDs or MSPs, the SDs or MSPs will be responsible to report this information. However, the cooperatives would bear costs related to the personnel hours committed to reporting the required information.

The Commission provides estimates of the time burden required for exempt cooperatives to comply with the proposed requirements below.[42] The estimates include quantifiable costs, including one-time and annual burden hours and costs per cooperative, and costs that are incurred on a swap-by-swap basis. The dollar estimates are offered as ranges with upper and lower bounds, which is necessary to accommodate uncertainty regarding the estimates.

[42] *See* 5 CFR 1320.3(b) for the definition of the term ''burden.''

3. Number of Exempt Cooperatives and Swaps

The total reporting related costs of the cooperative exemption would depend on the number of cooperatives electing the cooperative exemption, as well as the number of swaps for which cooperatives would elect to use the exemption. In addition, as described in more detail below, the cost will also depend on whether the cooperatives choose the annual reporting option permitted by the proposed rule.

To identify the number of cooperatives that could elect the cooperative exemption, the Commission first considered what types of cooperatives may be financial entities with total assets in excess of $10 billion since non-financial cooperatives or cooperatives that are financial entities with assets of $10 billion or less can use the end-user exception in the alternative and the costs of reporting thereunder have already been addressed in the end-user exception rulemaking. Given the comments received for the end-user exception NPRM regarding cooperatives and consideration of other financial cooperatives the Commission is aware of, the Commission believes that cooperatives that may meet the definition of exempt cooperative could be farm credit system cooperatives, credit unions, and financial cooperatives that provide financing in the rural electric space. Based on a review of data available from the regulators for these entities and information provided by commenters, the Commission believes there are approximately ten cooperatives that will meet the definition of ''financial entity'' in Section 2(h)(7)(C)(i)(VIII) of the CEA and which will not be exempt from that definition as small financial institutions because they have total assets in excess of $10 billion. Each of these is likely to function as the reporting counterparty for at least some of their exempted swaps in any given year since they would likely be responsible for reporting when transacting exempted swaps with members.

A review of information provided for five cooperatives that likely would be exempt cooperatives showed a range of swap usage from none to as many as approximately 200 swaps a year with most entering into less than 50 swaps a year. Using the high end of reported swaps for the five cooperatives for which information was available, an estimate of 50 swaps per year was calculated. The Commission believes this estimate is high because some of the reported swaps may not meet the requirements of the proposed rule and several cooperatives for which information was not available to the Commission likely undertake little, if any, swap activity. However, for purposes of the cost calculations, we will assume that each of the ten potential exempt cooperatives will enter into 50 swaps per year. Accordingly, we estimate that exempt cooperatives may elect the cooperative exemption for 500 swaps each year.

4. Proposed § 39.6(f)(3) Reporting Requirements Cost Estimate

a. Ongoing Reporting Burden Hours and Costs

Proposed § 39.6(f)(3) would require exempt cooperatives that are reporting counterparties to comply with the reporting requirements in paragraph (b) of § 39.6, which require delivering specified information to a registered SDR or, if no registered SDR is available, the Commission. Counterparties must also undertake reporting pursuant to § 39.6(b) if the end-user exception is elected.

Assuming that the exempt cooperative is the reporting counterparty, it would have to report the information required in § 39.6(b)(1)(i) and (ii) for each swap for which it elects the cooperative exemption. To comply with § 39.6(b)(1)(i) and (ii), each reporting counterparty would be required to check one box in the SDR or Commission reporting data fields indicating that the exempt cooperative is electing not to clear the swap. The Commission expects that each reporting counterparty would likely spend 15 seconds to two minutes per transaction entering this information into the reporting system, or in the aggregate, 1.5 hours to 17 hours per year for all 500 estimated swaps. Using a financial analyst's average salary of $208/hour, these burden hour costs would equal between less than $1 and $7 for each transaction, or approximately $300 to $3,500 per year for all 500 transactions.[43]

Regulation 39.6(b)(1)(iii) allows for certain counterparty specific information identified therein to be reported either swap-by-swap by the reporting counterparty or annually by the electing counterparty. For the end-user exception, the alternative options may be useful in instances where electing counterparties enter into very

[43] Wage estimates are taken from the SIFMA ''Report on Management and Professional Earnings in the Securities Industry 2011.'' Hourly wages are calculated assuming 1,800 hours per year and a multiplier of 5.35 to account for overhead and bonuses. In light of the challenges of developing precise estimates, the results of all calculations have been rounded.

few swaps each year and the reporting counterparties will report this information for them on a swap-by-swap basis. However, for the cooperative exemption, the exempt cooperative is the electing counterparty and will also likely be the reporting counterparty for swaps entered into with members. Furthermore, the Commission expects that, assuming the cooperative is the reporting counterparty, the time burden for the first swap entered into by an exempt cooperative in collecting and reporting the information required by § 39.6(b)(1)(iii) will be approximately the same as the time burden for collecting and reporting the information for the annual filing. Given the cost equivalence for annual reporting to reporting a single swap if the exempt cooperative is the electing counterparty and the reporting counterparty, the Commission assumes that all ten exempt cooperatives will make an annual filing of the information required for § 39.6(1)(iii). The Commission estimates that it will take an average of 30 minutes to 90 minutes to complete and submit the annual filing. The average hourly wage for a compliance attorney is $390, which means that the annual per cooperative cost for the filing is likely to be between $200 and $590. If all ten eligible cooperatives were to undertake an annual filing, the aggregate cost would be $2,000 to $5,900.

b. Other Costs

i. Updating Reporting Procedures

The Commission believes that cooperatives electing the cooperative exemption would have established reporting systems to comply with other Commission rules regarding swap reporting generally. Reporting counterparties may need to modify their reporting systems in order to accommodate the additional data fields required by this rule. The Commission estimates that those modifications would create a one-time expense of approximately one to ten burden hours per reporting counterparty. The Commission estimates that the hourly wage for a senior programmer is $341, which means that the one-time, per entity cost for modifying reporting systems to comply with proposed § 39.6(f)(3) would likely be between $340 and $3,400, and the aggregate one-time cost for all ten potential exempt cooperatives is estimated to be $3,400 to $34,100.

ii. Burden on Non-Reporting Cooperatives

When an exempt cooperative is not functioning as the reporting counterparty (i.e. when transacting with a SD or MSP), it may, at certain times, need to communicate information to its reporting counterparties in order to facilitate reporting. That information may include, among other things, whether the exempt cooperative has filed an annual report pursuant to § 39.6(b) and information to facilitate any due diligence that the reporting counterparty may conduct. These costs will likely vary substantially depending on the number of different reporting counterparties with whom an exempt cooperative conducts transactions, how frequently the exempt cooperative enters into swaps, whether the exempt cooperative undertakes an annual filing, and the due diligence that the reporting counterparty chooses to conduct. Therefore, the Commission believes that it is difficult to estimate these costs reliably at this time. Nevertheless, the Commission estimates that a non-reporting exempt cooperative will incur between five minutes and ten hours of annual burden hours. The hourly wage for a compliance attorney is $390, which means that the annual aggregate cost for communicating information to the reporting counterparty is likely to be between $400 and $39,000. Given the unknowns associated with this cost estimate noted above, the Commission does not believe this wide range can be narrowed without further information.

c. Reporting Cost Summary

The reporting costs described above are summarized in the following table.

SUMMARY OF REPORTING-RELATED COSTS

Reporting	Aggregate hours per annum [44]	Cost range [45]	Notes
(1) Swap-by-Swap Reporting to SDR or Commission (§§ 39.6(b)(1)(i) and (ii)).	1.5–17	$300 to $3,500 ($208/hour)	This assumes that all exempt cooperatives will be reporting counterparties.
(2) Electing Counterparty Annual Reporting (§ 39.6(b)(1)(iii)).	5–15	$2,000–$5,900 ($390/hour)	This assumes that all exempt cooperatives will be reporting counterparties and will elect annual reporting for § 39.6(b)(1)(iii) information.
(3) Updating Reporting Procedures (§ 39.6(f)(3)).	10–100	$3,400–$34,100 ($341/hour)	This assumes that all exempt cooperatives will have to update reporting procedures. This is a one-time cost in the first year.
(4) Non-Reporting Counterparties (§ 39.6(f)(3))	1.0–100	$400–$39,000 ($390/hour)	This estimate assumes all exempt cooperatives are non-reporting counterparties for some swaps and each spends between five minutes to ten hours each year on this task.
Estimated Reporting Total	18–232 (125 midpoint)	$6,100–$82,500 ($44,300 midpoint)	Sum of rows (1) through (4).

3. Information Collection Comments

The Commission invites public comment on any aspect of the reporting burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

[44] Hours estimates reflect total burden hours for the ten exempt cooperatives, rounded to nearest half-hour.

[45] The total burden costs are aggregate costs for the ten exempt cooperatives, rounded to nearest hundred dollars.

Comments may be submitted directly to the Office of Information and Regulatory Affairs (''OIRA'') in OMB, by fax at (202) 395–6566, or by email at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that they can be considered in connection with a final rule. Refer to the Addresses section of this release for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting *www.RegInfo.gov.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the **Federal Register**. Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication.

List of Subjects in 17 CFR Part 39

Business and industry, Clearing, Commodity futures, Cooperatives, Reporting requirements, Swaps.

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR part 39 as follows:

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

1. The authority citation for part 39 continues to read as follows:

Authority: 7 U.S.C. 2 and 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

2. Amend § 39.6, to add paragraph (f) to read as follows:

§ 39.6 Exceptions to the clearing requirement.

* * * * *

(f) *Exemption for cooperatives.* Exempt cooperatives may elect not to clear certain swaps identified in paragraph (f)(2) of this section that are otherwise subject to the clearing requirement of section 2(h)(1)(A) of the Act if the following requirements are satisfied.

(1) For the purposes of this paragraph, an *exempt cooperative* means a cooperative:

(i) Formed and existing pursuant to Federal or state law as a cooperative;

(ii) That is a ''financial entity,'' as defined in section 2(h)(7)(C)(i) of the Act, solely because of section 2(h)(7)(C)(i)(VIII) of the Act; and

(iii) Each member of which is not a ''financial entity,'' as defined in section 2(h)(7)(C)(i) of the Act, or if any member is a financial entity solely because of section 2(h)(7)(C)(i)(VIII) of the Act, such member is:

(A) Exempt from the definition of ''financial entity'' pursuant to paragraph (d) of this section; or

(B) A cooperative formed under Federal or state law as a cooperative and each member thereof is either not a ''financial entity,'' as defined in section 2(h)(7)(C)(i) of the Act, or is exempt from the definition of ''financial entity'' pursuant to paragraph (d) of this section.

(2) An exempt cooperative may elect not to clear a swap that is subject to the clearing requirement of section 2(h)(1)(A) of the Act if the swap:

(i) Is entered into with a member of the exempt cooperative in connection with originating a loan or loans for the member, which means the requirements of § 1.3(ggg)(5)(i), (ii), and (iii) are satisfied; *provided that,* for this purpose, the term ''insured depository institution'' as used in those sections is replaced with the term ''exempt cooperative'' and the word ''customer'' is replaced with the word ''member;'' or

(ii) Hedges or mitigates commercial risk, in accordance with paragraph (c) of this section, related to loans to members or arising from a swap or swaps that meet the requirements of paragraph (f)(2)(i) of this section.

(3) An exempt cooperative that elects the exemption provided in paragraph (f) of this section shall comply with the requirements of paragraph (b) of this section. For this purpose, the exempt cooperative shall be the ''electing counterparty,'' as such term is used in paragraph (b), and for purposes of paragraph (b)(1)(iii)(A), the reporting counterparty shall report that an exemption is being elected in accordance with paragraph (f) of this section.

Issued in Washington, DC, on July 10, 2012, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Clearing Exemption for Certain Swaps Entered Into by Cooperatives—Commission Voting Summary and Statements of Commissioners

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

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rule that would permit certain cooperatives to choose not to clear member-related swaps.

One of the primary goals of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was to lower risk to the financial system by requiring standardized swaps between financial entities to be cleared.

Congress provided that non-financial entities, such as farmers, ranchers, manufacturers and other end users, should be able to choose whether or not to clear those swaps that hedge or mitigate commercial risks.

Cooperatives act on behalf of and are an extension of their members. Thus, I believe it is appropriate that those cooperatives made up entirely of members that could individually qualify for the end-user exception should qualify as well themselves as end users in certain circumstances.

The proposed cooperative exemption is narrowly tailored, and extends only to:

- Swaps entered into with members of the cooperative in connection with originating loans for members; and
- Swaps entered into by a cooperative to hedge or mitigate risks associated with member loans or member loan related swaps.

[FR Doc. 2012–17357 Filed 7–16–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

Correction to Modification of Regulations Regarding the Definition of Factual Information and Time Limits for Submission of Factual Information

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Joanna Theiss at (202) 482–5052.

Correction

On July 10, 2012, the Department of Commerce published in the **Federal Register** the following notice: *Modification of Regulations Regarding the Definition of Factual Information and Time Limits for Submission of Factual Information,* 77 FR 40534 (July 10, 2012) (''*Modification of Factual Information Regulations''*). After publication of *Modification of Factual Information Regulations,* we identified an inadvertent error in this notice. Specifically, the notice does not include a Docket Number for the submission of comments through the Federal eRulemaking Portal. The Docket Number is Docket No. ITA–2012–0004. To be assured of consideration, comments must be received by August 24, 2012.