Federal Register

9–13–01
Thursday
Vol. 66 No. 178
Sept. 13, 2001
Pages 47571–47876

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

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

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

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

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $638, or $697 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $253. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $9.00 for each issue, or $9.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 66 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**512–1800**
Assistance with public single copies	**512–1803**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

FEDERAL REGISTER WORKSHOP

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

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: September 20, 2001—9:00 a.m. to noon

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538; or
info@fedreg.nara.gov

Contents

Federal Register

Vol. 66, No. 178

Thursday, September 13, 2001

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Nutrition Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Livestock and poultry disease control:
Brucellosis in sheep, goats, and horses; indemnity payments, 47593–47599

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus (HIV)—
South African trade unions; capacity-building assistance to develop and implement effective HIV/AIDS prevention education programs, 47675–47676

Centers for Medicare & Medicaid Services
NOTICES
Agency information collection activities:
Proposed collection; comment request, 47676

Coast Guard
RULES
Drawbridge operations:
Connecticut, 47578
Massachusetts, 47578
New York, 47577–47578
PROPOSED RULES
Drawbridge operations:
New York, 47601–47603

Commerce Department
See Economic Development Administration
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Navy Department

Economic Development Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 47630

Education Department
NOTICES
Postsecondary education:
Federal Family Education Loan Program—
Interest rates, 47637–47639
William D. Ford Federal Direct Loan Program—
Interest rates, 47639–47643

Energy Department
See Hearings and Appeals Office, Energy Department
See Western Area Power Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Nuclear Engineering Education Research Program, 47644
Meetings:
Environmental Management Site-Specific Advisory Board—
Los Alamos National Laboratory, NM, 47644
Radioactive waste:
Yucca Mountain, NV; site recommendation consideration hearings, etc., 47644–47645

Environmental Protection Agency
RULES
Air programs; State authority delegations:
Pennsylvania, 47579–47583
Air quality implementation plans; approval and promulgation; various States:
California, 47578–47579
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 47583–47591
PROPOSED RULES
Air programs: State authority delegations:
Pennsylvania, 47611–47612
Air quality implementation plans; approval and promulgation; various States:
California; correction, 47603–47611
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 47612–47618
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 47652–47653
Grants and cooperative agreements; availability, etc.:
Clean Water Act; nonpoint source grants to States and territories in 2002 and subsequent FYs, 47653–47657
Pesticide programs:
Risk assessments; availability—
Endosulfan, 47666–47667
Pesticide registration, cancellation, etc.:
Azinphos-methyl and phosmet, 47657–47658
Diazinon, 47658–47666
Ethyl parathion, 47667–47670
Superfund; response and remedial actions, proposed settlements, etc.:
Beede Waste Oil Site, NH, 47670–47673
Water pollution control:
Total maximum daily loads—
Mermentau and Vermilion/Teche river basins, LA; TMDLs required by court order, 47673–47674

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
Infocom Corp., Inc., et al., 47630–47632

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 47573–47575
Empresa Brasileira de Aeronautic S.A. (EMBRAER), 47571–47573

General Electric Co., 47575–47576
Class D airspace, 47577
PROPOSED RULES
Airports:
Naples Municipal Airport, FL; Stage 2 operations prohibited, 47601
Airworthiness directives:
Bell, 47600–47601
NOTICES
Meetings:
Commercial Space Transportation Advisory Committee, 47720–47721

Federal Communications Commission
RULES
Common carrier services:
Numbering—
Toll free service access codes; CFR correction, 47591
Frequency allocations and radio treaty matters:
New advanced mobile and fixed terrestrial wireless services; frequencies below 3 GHz, 47591
PROPOSED RULES
Frequency allocations and radio treaty matters:
Mobile satellite service providers; flexible use of assigned spectrum over land-based transmitters, 47621–47625
New advanced mobile and fixed terrestrial wireless services; frequencies below 3 GHz, 47618–47621

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Chatham County, NC, 47721
Erie County, NY, 47721–47722
St. Charles, Jefferson, and Orleans Parishes, LA, 47722–47724

Federal Housing Enterprise Oversight Office
RULES
Risk-based capital:
Stress test; capital requirement and classification for supervisory action, 47729–47875

Federal Transit Administration
NOTICES
Environmental statements; notice of intent:
St. Charles, Jefferson, and Orleans Parishes, LA, 47722–47724

Fish and Wildlife Service
NOTICES
Marine mammal permit applications, 47682–47683

Food and Drug Administration
NOTICES
Meetings:
Barcelona, Spain; Global Harmonization Task Force Conference; preparation, 47676–47677

Food and Nutrition Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 47627–47630

General Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 47674

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
Complementary and Alternative Medicine Policy, White House Commission, 47674–47675
Organization, functions, and authority delegations:
Assistant Secretary for Management and Budget, 47675
Civil Rights Office, Director, 47675

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 47645–47650

Housing and Urban Development Department
See Federal Housing Enterprise Oversight Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 47681–47682

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Gray portland cement and clinker from—
Mexico, 47632–47636
Import investigations:
Accelerated tariff elimination; probable economic effect, 47636–47637

International Trade Commission
NOTICES
Import investigations:
Set-top boxes and components, 47686
Steel products, 47686

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Lakeview Resource Area, OR, 47683–47684
Oil and gas leases:
Montana, 47684
Public land orders:
Colorado, 47684–47685

Legal Services Corporation
NOTICES
Reports and guidance documents; availability, etc.:
LSC Regulations Review Task Force Report; comment request, 47698–47699
Property Aquisition and Management Manual; issuance, 47688–47698

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 47677

National Center for Research Resources, 47677–47678
National Institute of Allergy and Infectious Diseases, 47680
National Institute of Child Health and Human Development, 47679
National Institute of Dental and Craniofacial Research, 47678–47679
National Institute of Environmental Health Sciences, 47679–47680
National Institute of Mental Health, 47680
National Institute on Deafness and Other Communication Disorders, 47679
Scientific Review Center, 47680–47681

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock, 47591–47592
PROPOSED RULES
Endangered and threatened species:
Marine and anadromous species—
West Coast salmonids; evolutionary significant units, 47625–47626

Navy Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Codeon Corp., 47637

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
FirstEnergy Nuclear Operating Co. et al., 47699–47700
Reports and guidance documents; availability, etc.:
Degraded and nonconforming conditions resolution; generic letter, 47700–47708

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 47687–47688

Office of Federal Housing Enterprise Oversight
See Federal Housing Enterprise Oversight Office

Postal Rate Commission
NOTICES
Visits to facilities, 47708

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
American River Pump Station Project, Placer County, CA, 47685–47686

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 47709
Chicago Board Options Exchange, Inc., 47709–47710
New York Stock Exchange, Inc., 47710–47711
Applications, hearings, determinations, etc.:
Public utility holding company filings, 47708–47709

Small Business Administration
NOTICES
Disaster loan areas:
Kentucky, 47711
Texas, 47711
Virginia, 47711
West Virginia, 47711–47712

State Department
NOTICES
Art objects; importation for exhibition:
Brazil: Body and Soul, 47712
Scream the Truth at the World: Emanuel Ringelblum and the Secret Archive of the Warsaw Ghetto, 47712
Grants and cooperative agreements; availability, etc.:
New Independent States College and University Partnerships Program, 47716–47720
New Independent States Community College Partnerships Program, 47712–47716

Surface Transportation Board
NOTICES
Railroad services abandonment:
CSX Transportation, Inc., 47724

Thrift Supervision Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 47725

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Hearings, etc.—
Biz Jet Services, Inc., 47720

Treasury Department
See Thrift Supervision Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 47724–47725

Veterans Affairs Department
NOTICES
Privacy Act:
Systems of records, 47725–47728

Western Area Power Administration

NOTICES

Environmental statements; availability, etc.:

Natrona County, WY; Casper Creek Crossing, Spence-Thermopolis 230-kV and Alcova-Copper Mountain 115-kV transmission line repairs, 47650–47651

Loveland Area Projects; post-2004 resource pool; allocation procedures, etc., 47652

Separate Parts In This Issue

Part II

Department of Housing and Urban Development, Federal Housing Enterprise Oversight Office, 47729–47875

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

9 CFR

Proposed Rules:

51....................................47593

12 CFR

1750................................47730

14 CFR

39 (3 documents) 47571, 47573, 47575

71....................................47577

Proposed Rules:

39....................................47600

161..................................47601

33 CFR

117 (3 documents) 47577, 47578

Proposed Rules:

117..................................47601

40 CFR

52....................................47578

63....................................47579

300..................................47583

Proposed Rules:

52....................................47603

63....................................47611

300..................................47612

47 CFR

2......................................47591

52....................................47591

Proposed Rules:

2 (2 documents) 47618, 47621

50 CFR

679..................................47591

Proposed Rules:

223..................................47625

Rules and Regulations

Federal Register

Vol. 66, No. 178

Thursday, September 13, 2001

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–321–AD; Amendment 39–12436; AD 2001–18–10]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes, that requires replacement of the engine oil pressure sensors with new sensors, and installation of an oil tank pressure relief kit. Additionally, this amendment requires revision of the Airplane Flight Manual that would specify new oil pressure limits. This action is necessary to prevent rejected takeoffs due to exceeding engine oil pressure limits, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective October 18, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 18, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Linda M. Haynes, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6091; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes was published in the **Federal Register** on December 19, 2000 (65 FR 79323). That action proposed to require replacement of the engine oil pressure sensors with new sensors, and installation of an oil tank pressure relief kit. Additionally, that action proposed to require revision of the Airplane Flight Manual (AFM) that would specify new oil pressure limits.

Public Comment

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Withdraw the Proposed Rule

One commenter states that 96% of the applicable airplanes registered in the United States are already in compliance with the proposed requirements. Therefore, the commenter requests that the proposed rule be withdrawn.

The FAA does not agree with the commenter's request. Even if the current U.S.-registered fleet may be in compliance with the requirements of the AD, the issuance of the rule is still necessary to ensure that any affected airplane that is imported and placed on the U.S. register in the future will be required to be in compliance as well. Issuance of this AD will ensure that the airplane is modified and contains the appropriate AFM revision prior to the time it is permitted to operate in the U.S.

Request To Require Terminating Action

One commenter states that the terminating modification referenced in the ''Interim Action'' paragraph of the preamble of the proposed rule has been developed and approved. That terminating action includes accomplishing certain modifications of the Full Authority Digital Engine Control (FADEC) software system, Engine Indication and Crew Alerting System (EICAS), and Engine Indication and Electronic Flight Instrument System (EFIS), and replacing the existing oil pressure sensor, as specified in certain EMBRAER and Rolls-Royce service bulletins. The commenter requests that the terminating action be added as a requirement in the final rule.

The FAA does not agree with the commenter's requests, although we do acknowledge that a terminating action has been developed and approved. However, the specific modifications included in the terminating action were not available at the time the proposed rule was issued. Requiring such modifications in the final rule would substantially alter the requirements and increase the scope of the proposed rule, which would require us to provide opportunity for public comment of those additional requirements. In this case, we find that to delay this action to allow for public opportunity to comment would be inappropriate in light of the identified unsafe condition. Therefore, we have added the three modifications as an optional terminating action in new paragraph (c) of the final rule, specifying that accomplishment of all three optional modifications constitutes terminating action for the requirements of this AD.

Further Rulemaking

The FAA is considering further rulemaking to require accomplishment of the three modifications mentioned above.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 185 EMBRAER Model EMB–135 and EMB–145 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to install the oil pressure sensor, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,562 per airplane. The FAA estimates that it will take approximately 2 work hours per airplane to install the oil tank pressure relief kit. Required parts will cost approximately $2,421 per airplane. Additionally, it will take approximately 1 work hour per airplane to accomplish the revision of the AFM. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,151,255, or $6,223 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–18–10 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–12436. Docket 2000–NM–321–AD.

Applicability: Model EMB–135 and EMB–145 airplanes, serial numbers 145001 through 145369 inclusive, equipped with Rolls-Royce/Allison engine Models AE 3007A, AE 3007A1/1, AE 3007A1/2, AE 3007A1/3, AE 3007A1, and AE 3007A1P; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To prevent rejected takeoffs due to exceeding engine oil pressure limits, which could result in reduced controllability of the airplane, accomplish the following:

Required Actions

(a) Within 6 months after the effective date of this AD: Accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD concurrently.

(1) Replace the engine oil pressure sensors with new sensors, per EMBRAER Service Bulletin 145–31–0021, dated August 1, 2000.

(2) Install an oil tank pressure relief kit per Rolls-Royce Service Bulletin AE 3007A–79–025, dated August 1, 2000.

(b) After completion of the actions required by paragraphs (a)(1) and (a)(2) of this AD and before further flight: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of Revision 40 of the EMBRAER Model EMB–145 AFM, dated August 11, 2000, into the AFM.

Optional Terminating Action

(c) Accomplishment of all of the actions specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD.

(1) Upgrade the Full Authority Digital Engine Control (FADEC) software system in accordance with Embraer Service Bulletins 145–73–0011, Change 01, dated January 9, 2001, and Change 02, dated April 24, 2001; and 145–73–0012, 145–73–0013, 145–73–0014, all dated January 9, 2001.

(2) Upgrade the Engine Indication and Crew Alerting System (EICAS) and Engine Indication and Electronic Flight Instrument System (EFIS) in accordance with Embraer Service Bulletins 145–31–0014, Change 03, dated March 2, 2001; and 145–31–0020, Change 01, dated January 26, 2001.

(3) Remove the existing oil pressure sensor and replace it with a new sensor having part number 23073715, in accordance with Rolls-Royce Service Bulletin AE 3007A–79–029, dated November 9, 2000.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Atlanta ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions specified in paragraphs (a)(1), (a)(2), and (b) of this AD shall be done in accordance with EMBRAER Service Bulletin 145–31–0021, dated August 1, 2000; Rolls-Royce Service Bulletin AE 3007A–79–025, dated August 1, 2000; and page 2–11, Revision 40 of the EMBRAER Model EMB–145 Airplane Flight Manual, dated August 11, 2000.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian Notice of Proposed Regulations NPR/AD–2000–145–05, dated August 23, 2000, and NPR/AD–2000-AE3007–01, dated August 24, 2000.

Effective Date

(g) This amendment becomes effective on October 18, 2001.

Issued in Renton, Washington, on September 4, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–22670 Filed 9–12–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–265–AD; Amendment 39–12438; AD 2001–18–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, –300F and –400ER Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–200, –300, –300F and –400ER series airplanes. This action requires repetitive inspections to find discrepancies of the wire bundles located between the P50 panel and the nose wheel well structure, and corrective actions, if necessary. This action is necessary to find and fix such discrepancies, which could result in electrical arcing, smoke, or fire in the cabin, and failure of certain systems essential to safe flight and landing of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 28, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 28, 2001.

Comments for inclusion in the Rules Docket must be received on or before November 13, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–265–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–265–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tony Castillos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2864; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that, during the approach to landing of a Boeing Model 767–200 series airplane, the flight crew received several Engine Indication and Crew Alerting System warning messages, and circuit breakers popped, resulting in a burnt smell and smoke in the cabin area. Investigation revealed that the W451 wire bundle located in the Electronic Equipment Center, just forward of the P51 panel, had caught fire and burned at station 266, right buttock line 35. The fire was due to a #2-gage power output wire of the transformer rectifier unit that had chafed against the right aft corner of the nose landing gear box, which caused a short in the wire. The fire resulted in damage to multiple wire bundles, and significant damage to more than 200 wires. Subsequent inspections done on certain Boeing Model 767–300, –300F and –400ER series airplanes revealed a potential chafing condition of similar wiring against the nose wheel well structure was likely to develop. Such chafing was found on one airplane in that group of inspected airplanes. These conditions, if not corrected, could result in electrical arcing, smoke, or fire in the cabin, and failure of certain systems essential to safe flight and landing of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletins 767–24A0140 (for 767–400ER series airplanes), and 767–24A0139 (for Model 767–200, –300, and –300F series airplanes), both dated February 9, 2001. The service bulletins describe procedures for repetitive inspections for discrepancies of the wire bundles located between the P50 panel and the nose wheel well structure (*i.e.,* chafed or broken wires, damaged insulation or conductors, inadequate clearance between the wire bundle, insulation, and nose wheel well structure), and corrective actions, if necessary. The corrective actions include, but are not limited to, the following:

- Repair or replacement of any damaged wires or worn components
- Installation of protective sleeving over the wire bundles
- Relocation of the wire bundle to provide adequate clearance if less than 0.25 inch exists between the wire bundle, insulation, and nose wheel well structure
- A system test for any wire that is replaced or spliced to repair damage

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Model 767–200, -300, -300F and -400ER series airplanes of the same type design, this AD is being issued to find and fix discrepancies (*i.e.,* chafed or broken wires, damaged insulation or conductors, inadequate clearance between the wire bundle, insulation, and nose wheel well structure) of the wire bundles located between the P50 panel and the nose wheel structure, which could result in electrical arcing, smoke, or fire in the cabin, and failure of certain systems essential to safe flight and landing of the airplane. The actions are required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between This AD and the Service Bulletins

While the service bulletins do not specify the type of inspection of the wire bundles to find discrepancies (*i.e.,* chafed or broken wires; damaged insulation or conductors; inadequate clearance between the wire bundle, insulation, and nose wheel well structure), this AD would require a detailed visual inspection to find such discrepancies. A note has been included in this AD to define that inspection.

Additionally, although the service bulletins specify that the initial inspection is to be completed ''at the earliest opportunity when manpower and facilities are available,'' the FAA finds that such a compliance time will not ensure that the inspection is accomplished in a timely manner. In developing an appropriate compliance time for the inspection, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the amount of time necessary to accomplish the inspection, and the practical aspect of accomplishing the inspection within an interval of time that parallels normal scheduled maintenance for the affected operators. In consideration of these factors, the FAA has determined that 90 days after the effective date of this AD represents an appropriate interval of time allowable wherein an acceptable level of safety can be maintained.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–265–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–18–12 Boeing: Amendment 39–12438. Docket 2001–NM–265–AD.

Applicability: Model 767–200, –300, and –300F series airplanes, as listed in Boeing Alert Service Bulletin 767–24A0139, and Model 767–400ER series airplanes as listed in Boeing Alert Service Bulletin 767–24A0140, both dated February 9, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To find and fix discrepancies of the wire bundles located between the P50 panel and the nose wheel well structure, which could result in electrical arcing, smoke, or fire in the cabin, and failure of certain systems essential to safe flight and landing of the airplane; accomplish the following:

Repetitive Inspections/Corrective Actions

(a) Within 90 days after the effective date of this AD: Do a detailed visual inspection of the wire bundles between the P50 panel and the nose wheel structure to find discrepancies (i.e., chafed or broken wires, damaged insulation or conductors, inadequate clearance between the wire bundle, insulation, and nose wheel well structure), according to Boeing Alert Service Bulletin 767–24A0139 (for Model 767–200, –300, and –300F series airplanes), or 767–24A0140 (for Model 767–400ER series airplanes), both dated February 9, 2001; as applicable. Repeat the inspection every 6,000 flight hours or 18 months, whichever comes first.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) If any discrepancy is found after doing the inspection required by paragraph (a) of this AD: Before further flight, do the applicable corrective actions (i.e., repair or replace any damaged wires or worn components, install protective sleeving over the wire bundles, relocate the wire bundle to provide adequate clearance), according to Figure 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–24A0139 (for Model 767–200, –300, and –300F series airplanes), or 767–24A0140 (for Model 767–400ER series airplanes), both dated February 9, 2001; as applicable. Then repeat the inspection required by paragraph (a) of this AD at the time specified.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–24A0140, dated February 9, 2001; or Boeing Alert Service Bulletin 767–24A0139, dated February 9, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on September 28, 2001.

Issued in Renton, Washington, on September 4, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–22671 Filed 9–12–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–13–AD; Amendment 39–12432; AD 2001–18–06]

RIN 2120–AA64

Airworthiness Directives; General Electric Company T58 and CT58 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD's), applicable to General Electric Company (GE) T58 and CT58 series turboshaft engines. The current AD's revised the counting method for hours in repetitive heavy-lift (RHL) service and reduced the life limit for rotating components. Life-limited rotating components must be removed from service in accordance with the multiplying factors and retirement lives contained in General Electric Alert Service Bulletin (ASB) CT58 A72–162 (CEB–258), dated July 9, 1979. This amendment requires applying an additional multiplying factor to life-limited rotating parts when the engine is used in heavy lifting operations. This amendment is prompted by a review of the current AD's, AD–69–23–02 and AD–79–23–04, and a determination that the requirements of those AD's may conflict. This amendment will prevent RHL and utility service multiplier factors from being applied incorrectly. The actions specified in this AD are intended to prevent low-cycle fatigue failure of rotating parts that could result in uncontained engine failure and damage to the rotorcraft.

DATES: Effective October 18, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 18, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from from GE Aircraft Engines, General Electric Company, 1000 Western Avenue, Lynn, MA 01910. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Kevin Donovan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7743, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 69–23–02, Amendment 39–1086 (34 FR 18296, November 15, 1969); and AD 79–23–04, Amendment 39–3610 (44 FR 72103, December 13, 1979) that are applicable to General Electric Company CT58 turboshaft engines was published in the **Federal Register** on April 3, 2000 (64 FR 17471). That action proposed to require that the life limits of certain life-limited rotating parts be revised based on multiplying factors specified in GEAE Alert Service Bulletin (ASB) (CT58) 72–162 CEB 258, dated July 9, 1979, for RHL operations.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Differences Between the NPRM and the Amendment

Since the publication of the NPRM, the FAA has been informed that there are restricted category aircraft involved in RHL operations. As a result, the T58 models have been added to the Applicability of this amendment.

Economic Impact

There are approximately 380 engines of the affected design in the worldwide fleet. The FAA estimates that 130 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 0.25 work hour per engine to accomplish the proposed calculations, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,950.

Regulatory Impact

This final rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–1086 (34 FR 18296, October 15, 1970) and Amendment 39–3610 (44 FR 72103, December 13, 1979), and by adding a new airworthiness directive (AD) to read as follows:

AD 2001–18–06 GE Aircraft Engines: Amendment 39–12432. Docket No. 99–NE–13–AD. Supersedes AD 69–23–02, Amendment 39–1086 and AD 79–23–04, Amendment 39–3610.

Applicability: GE Aircraft Engines T58 and CT58 series turboshaft engine installed on, but not limited to Boeing—Vertol V–107 series, Kaman H–2, Bell UH–1F series; and Sikorsky CH/HH–3 series, S–61 A/H–3/CH124/CH–3/HH–3L/N/R series, and S–62 series rotorcraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already accomplished.

To prevent low-cycle fatigue failure of rotating parts that could result in uncontained engine failure and damage to the rotorcraft, accomplish the following:

Calculating New Life Limits for Rotating Parts

(a) Within 50 hours time-in-service after the effective date of this AD, calculate the new cycles-since-new for life-limited rotating parts in accordance with the Accomplishment Instructions, 2.A. through 2.G. of GEAE Service Bulletin (CT58) 72–162 CEB–258, revision 9, dated October 6, 1998.

(b) Remove any part from service that exceeds the new calculated life limit and replace it with a serviceable part.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the rotorcraft to a location where the requirements of this AD can be accomplished.

Documents That Have Been Incorporated By Reference

(e) The calculation shall be done in accordance with the Accomplishment Instructions, 2.A. through 2.G. of GEAE Service Bulletin (CT58) 72–162 CEB–258, revision 9, dated October 6, 1998 as follows:

Document No.	Pages	Revision	Date
(CT58) 72–162 CEB–258	1–4	9	October 6, 1998.
(CT58) 72–162 CEB–258	5	5	May 12, 1994.
(CT58) 72–162 CEB–258	6	7	April 25, 1997.
(CT58) 72–162 CEB–258	7–8	5	May 12, 1994.
(CT58) 72–162 CEB–258	9–11	7	April 25, 1997.
(CT58) 72–162 CEB–258	12–16	5	May 12, 1994.
(CT58) 72–162 CEB–258	17	7	April 25, 1997.
(CT58) 72–162 CEB–258	18	9	October 6, 1998.
(CT58) 72–162 CEB–258	19–20	5	May 12, 1994.
(CT58) 72–162 CEB–258	21	8	June 16, 1997.
(CT58) 72–162 CEB–258	22–24	5	May 12, 1994.
(CT58) 72–162 CEB–258	25–26	9	October 6, 1998.
(CT58) 72–162 CEB–258	27	5	May 12, 1994.

Total pages: 27.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from GE Aircraft Engines, General Electric Company, 1000 Western Avenue, Lynn, MA 01910. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on October 18, 2001.

Issued in Burlington, Massachusetts, on August 24, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–22312 Filed 9–12–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ANM–12]

Establishment of Class D Airspace; Kalispell, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class D surface area at Glacier Park International Airport, Kalispell, MT. The effect of this action is to provide controlled airspace to accommodate the procedures associated with the operation of a new Airport Traffic Control Tower (ATCT).

EFFECTIVE DATE: 0901 UTC, November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–12, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On July 10, 2001, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by establishing the Kalispell, MT, Class D surface area (66 FR 35914). This establishment of the Class D area is in support of a new ATCT under construction at the Glacier Park International Airport, Kalispell, MT. The FAA establishes Class D airspace where necessary to protect aircraft transitioning between the terminal and en route environments, and to provide local Visual Flight Rules (VFR) sequencing by ATCT personnel. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class D surface airspace areas are published in Paragraph 5000 of FAA Order 7400.91, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes a Class D surface area in the vicinity of Kalispell, MT. The intended effect of this rule is to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) and VFR at Glacier Park International Airport and between the terminal and en route transition states.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) 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 that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 CCFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9I, Airspace Designations and Reporting Points, dated September 1,2 000, and effective September 16, 2000, is amended as follows:

Paragraph 5000 General.

* * * * *

ANM MT D Kalispell, MT [New]

Glacier Park International Airport, Kalispell, MT

(Lat. 48°18′41″ N, long. 114°15′17″ W)

That airspace extending upwards from the surface to and including 5,500 feet MSL within a 4.3-mile radius of the Glacier Park International Airport. The Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on September 6, 2001.

Daniel A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–23034 Filed 9–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–146]

Drawbridge Operation Regulations: Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation for the Atlantic Beach Bridge, at mile 0.4, across the Reynolds Channel in New York. This deviation from the regulations allows the bridge to remain closed at various times between September 11, 2001 and October 30, 2001, to facilitate maintenance at the bridge.

DATES: This deviation is effective from September 11, 2001 through October 30, 2001.

FOR FURTHER INFORMATION CONTACT: Joe Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Atlantic Beach Bridge, mile 0.4, across the Reynolds Channel has a vertical clearance of 25 feet at mean high water, and 30 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.799(e).

The bridge owner, the Nassau County Bridge Authority, requested a temporary deviation from the operating regulations to facilitate necessary submarine power cable replacement, install new span lock machinery, and replace the bridge deck surface at the bridge.

This deviation to the operating regulations, in effect from September 11, 2001 through October 30, 2001, allows the Atlantic Beach Bridge to operate as follows:

(a) Remain closed from 8 a.m. on September 11, 2001 through 8 a.m. on September 15, 2001.

(b) Remain closed from 11 p.m. to 5 a.m., Monday through Friday, October 9, 2001 through October 24, 2001.

(c) Open only on the hour after at least a one-hour advance notice is given from 8 a.m. to 4:30 p.m., Monday through Friday, from September 24, 2001 through October 30, 2001.

(d) Open only one of the two spans for the passage of vessel traffic from 8 a.m. to 4:30 p.m. from October 1, 2001 through October 8, 2001.

This deviation from the operating regulations is authorized under 33 CFR 117.35 and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: August 30, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–22985 Filed 9–12–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–137]

Drawbridge Operation Regulations: Annisqualm River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Gloucester (AMTRAK) railroad bridge, mile 0.7, across the Annisqualm River in Gloucester, Massachusetts. This deviation from the regulations will allow the bridge to remain in the closed position from 12:01 a.m. on November 17, 2001 through 5 a.m. on November 19, 2001 and from 12:01 a.m. on November 24, 2001 through 5 a.m. on November 26, 2001. This temporary deviation is necessary to facilitate necessary repairs at the bridge.

DATES: This deviation is effective from November 17, 2001 through November 26, 2001.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Gloucester (AMTRAK) railroad bridge, mile 0.7, across the Annisqualm River has a vertical clearance in the closed position of 16 feet at mean high water and 25 feet at mean low water. The existing drawbridge operating regulations require the draw to open on signal at all times.

The bridge owner, National Railroad Passenger Corporation (AMTRAK), requested a temporary deviation from the drawbridge operating regulations to facilitate scheduled maintenance, replacement of the rails, ties, conley frogs, and timbers, at the bridge.

This deviation to the operating regulations will allow the bridge to remain in the closed position from 12:01 a.m. on November 17, 2001 through 5 a.m. on November 19, 2001 and from 12:01 a.m. on November 24, 2001 through 5 a.m. on November 26, 2001.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: August 30, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–22986 Filed 9–12–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–147]

Drawbridge Operation Regulations: Shaw Cove, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Amtrak Bridge, at mile 0.0, across the Shaw Cove at New London, Connecticut. This deviation allows bridge to remain closed from 10 p.m. on September 16, 2001 through 10 p.m. on September 19, 2001. This action is necessary to facilitate necessary maintenance at the bridge.

DATES: This deviation is effective September 16, 2001 through September 19, 2001.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Amtrak Bridge, at mile 0.0, across the Shaw Cove has a vertical clearance of 3 feet at mean high water, and 6 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.223.

The bridge owner, the National Railroad Passenger Corporation (Amtrak), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary maintenance, to replace the vertical couplers, at the bridge. This deviation from the operating regulations allows the bridge owner to keep the bridge in the closed position from 10 p.m. on September 16, 2001 through 10 p.m. on September 19, 2001. Vessels that can pass under the bridge without an opening may do so at all times during the closed period.

This deviation from the operating regulations is authorized under 33 CFR 117.35 and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: August 30, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–22987 Filed 9–12–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 039–PSD; FRL–7053–3]

Notice of Prevention of Significant Deterioration Final Determination for Metcalf Energy Center

AGENCY: Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: The purpose of this document is to announce that, on August 10, 2001, the U.S. Environmental Protection Agency (EPA) Environmental Appeals Board (''Board'') dismissed the petition for review filed by the City of Morgan Hill, Santa Teresa Citizen Action Group, Demand Clean Air, and Californians for Renewable Energy, Inc. of a permit issued to Metcalf Energy Center (MEC) by the Bay Area Air Quality Management District (BAAQMD or ''District'') pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations under 40 CFR 52.21. This document also announces that a final PSD permit has been issued to MEC by the BAAQMD pursuant to the terms and conditions of the District's delegation of authority from the U.S. EPA under 40 CFR 52.21(u).

DATES: The effective date for the Board's decision is August 10, 2001.

FOR FURTHER INFORMATION CONTACT: David Wampler, Permits Office (AIR3), Air Division, U.S. EPA Region IX, 75

Hawthorne Street, San Francisco, CA 94105, (415) 744–1259.

SUPPLEMENTARY INFORMATION: On May 4, 2001, the District issued a final PSD permit to MEC for the construction of a new electricity generating plant in San Jose, California. The PSD permit was issued pursuant to 40 CFR 52.21, the terms and conditions of the District's delegation of authority from the U.S. EPA under 40 CFR 52.21(u), and section 7 of the federal Endangered Species Act. Subsequent to the issuance of the PSD Permit, the Petitioners filed petitions for review of the PSD Permit with the Board on June 18, 2001. On August 10, 2001, the Board denied review of the petition because Petitioners failed to show clear error or other reason for the Board to grant review with respect to: (1) The District's BACT determinations for NO_X and CO (2.5 ppm averaged over 1 hour and 6 ppm averaged over 3 hours, respectively); (2) the District's treatment of collateral issues, including an ammonia slip limit of 5 ppm, possible formation of secondary particulate matter, and the potential for accidental releases of ammonia during transport and storage; (3) the District's failure to reopen the public comment period to allow public comment on a supplemental BACT analysis that was submitted after the closure of the original public comment period; (4) the District's failure to respond to certain comments that do not rise to the level necessary to justify a remand; (5) the District's bifurcation of the PSD Permit and the Final Determination of Compliance (a licensing document issued by the California Energy Commission); and (6) miscellaneous other issues including the Bay Area's ozone attainment plan, meteorological data, the Endangered Species Act, state laws, air toxics, and environmental justice. For a complete discussion of the EAB's decision, see *In re: Metcalf Energy Center,* PSD Appeal Nos. 01–07 and 01–08.

Pursuant to 40 CFR 124.19(f)(1), for purposes of judicial review, final Agency action occurs when a final PSD permit is issued and Agency review procedures are exhausted. This document is being published pursuant to 40 CFR 124.19(f)(2), which requires notice of any final agency action regarding a permit to be published in the **Federal Register**. This document being published today in the **Federal Register** constitutes notice of the final Agency action denying review of the PSD permit and, consequently, notice of the District's issuance of final PSD permit No. 99–AFC–3 to Metcalf Energy Center on May 4, 2001.

The proposed power plant, located near San Jose, California, will have a nominal electrical output of 600 MW and will be fired on natural gas. The proposed facility is subject to PSD for Nitrogen Oxides (NO_X), Carbon Monoxide (CO), Sulfur Dioxide (SO_2), and Particulate Matter (PM_{10}). The permit includes the following Best Available Control Technology (BACT) emission limits: NO_X at 2.5 ppmvd (based on 1-hour averaging at 15% O_2); 6 ppmvd CO (based on 3-hour averaging at 15% O_2); SO at 1.28 pounds per hour or 0.0006 lb/MM BTU of natural gas fired; and PM_{10} at 12 pounds per hour or 0.00565 lb/MM BTU of natural gas fired when duct burners are in operation. The BACT requirements include use of Selective Catalytic Reduction (SCR) for the control of NO_X emissions and a combination of good combustion control and natural gas for the control of CO and PM_{10} emissions. Continuous emission monitoring is required for NO_X and CO. The facility is also subject to New Source Performance Standards, subparts AA and GG, and the Acid Rain program under title IV of the Clean Air Act.

If available, judicial review of these determinations under section 307(b)(1) of the CAA may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which this document is published in the **Federal Register**. Under section 307(b)(2) of this Act, this determination shall not be subject to later judicial review in any civil or criminal proceedings for enforcement.

Dated: August 20, 2001.

Jack P. Broadbent,

Director, Air Division, Region IX.

[FR Doc. 01–23000 Filed 9–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[PA001–1000; FRL–7055–9]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; State of Pennsylvania; Department of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and delegation.

SUMMARY: EPA is taking direct final action to approve Pennsylvania Department of Environmental Protection's (PADEP's) request for delegation of authority to implement and enforce its hazardous air pollutant regulations for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning and secondary lead smelting which have been adopted by reference from the Federal requirements set forth in the Code of Federal Regulations. This approval will automatically delegate future amendments to these regulations. In addition, EPA is taking direct final action to approve of PADEP's mechanism for receiving delegation of future hazardous air pollutant regulations which it adopts unchanged from the Federal requirements. This mechanism entails submission of a delegation request letter to EPA following EPA notification of a new Federal requirement. EPA is not waiving its notification and reporting requirements under this approval; therefore, sources will need to send notifications and reports to both PADEP and EPA. This action pertains only to sources which are not required to obtain a Clean Air Act operating permit. The PADEP's request for delegation of authority to implement and enforce its hazardous air pollutant regulations at sources which are required to obtain a Clean Air Act operating permit was approved on January 5, 1998. EPA is taking this action in accordance with the Clean Air Act (CAA).

DATES: This direct final rule will be effective November 13, 2001 unless EPA receives adverse or critical comments by October 15, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be sent concurrently to: Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, and James M. Salvaggio, Director, Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Pennsylvania Department of

Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Dianne J. McNally, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street (3AP11), Philadelphia, PA 19103–2029, *mcnally.dianne@epa.gov* (telephone 215–814–3297).

SUPPLEMENTARY INFORMATION:

I. Background

Section 112(l) of the CAA and 40 Code of Federal Regulations (CFR) part 63, subpart E authorize EPA to approve of State rules and programs to be implemented and enforced in place of certain CAA requirements, including the National Emission Standards for Hazardous Air Pollutants set forth at 40 CFR part 63. EPA promulgated the program approval regulations on November 26, 1993 (58 FR 62262) and subsequently amended these regulations on September 14, 2000 (65 FR 55810). An approvable State program must contain, among other criteria, the following elements:

(a) A demonstration of the state's authority and resources to implement and enforce regulations that are at least as stringent as the NESHAP requirements;

(b) A schedule demonstrating expeditious implementation of the regulation; and

(c) A plan that assures expeditious compliance by all sources subject to the regulation.

On November 28, 2000, PADEP submitted to EPA a request to receive delegation of authority to implement and enforce the hazardous air pollutant regulations for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning and secondary lead smelting which have been adopted by reference from 40 CFR part 63, subparts M, N, O, T and X, respectively. The PADEP also requested that EPA automatically delegate future amendments to these regulations and approve PADEP's mechanism for receiving delegation of future hazardous air pollutant regulations which it adopts unchanged from the Federal requirements. This mechanism entails submission of a delegation request letter to EPA following EPA notification of a new Federal requirement. The PADEP requested these approvals for sources not subject to the permitting requirements of 40 CFR part 70. On January 5, 1998, PADEP received delegation of authority to implement all emission standards promulgated in 40 CFR part 63, as they apply to major sources, as defined by 40 CFR part 70.

II. EPA's Analysis of PADEP's Submittal

Based on PADEP's program approval request and its pertinent laws and regulations, EPA has determined that such an approval is appropriate in that PADEP has satisfied the criteria of 40 CFR 63.91. In accordance with 40 CFR 63.91(d)(3)(i), PADEP submitted a written finding by the State Attorney General which demonstrates that the State has the necessary legal authority to implement and enforce its regulations, including the enforcement authorities which meet 40 CFR 70.11, the authority to request information from regulated sources and the authority to inspect sources and records to determine compliance status. In accordance with 40 CFR 63.91(d)(3)(ii), PADEP submitted copies of its statutes, regulations and requirements that grant authority to PADEP to implement and enforce the regulations. In accordance with 40 CFR 63.91(d)(3)(iii)–(v), PADEP submitted documentation of adequate resources and a schedule and plan to assure expeditious State implementation and compliance by all sources. Therefore, the PADEP program has adequate and effective authorities, resources, and procedures in place for implementation and enforcement of sources subject to the requirements of 40 CFR part 63, subparts M, N, O, T and X, as well as any future emission standards, should PADEP seek delegation for these standards. The PADEP automatically adopts the emission standards promulgated in 40 CFR part 63 into its permitting program under section 6.6(a) of the Pennsylvania Air Pollution Control Act, 35 P.S. section 4006.6(a). The PADEP has the primary authority and responsibility to carry out all elements of these programs for all sources covered in Pennsylvania, including on-site inspections, record keeping reviews, and enforcement.

III. Terms of Program Approval and Delegation of Authority

In order for PADEP to receive automatic delegation of future amendments to the perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning and secondary lead smelting emission standards, as they apply to facilities not required to obtain a permit under 40 CFR part 70, each amendment must be legally adopted by the State of Pennsylvania. As stated earlier, these amendments are automatically adopted into PADEP's permitting program under section 6.6(a) of the Pennsylvania Air Pollution Control Act, 35 P.S. section 4006.6(a).

EPA has also determined that PADEP's mechanism for receiving delegation of future hazardous air pollutant regulations which it adopts unchanged from the Federal requirements, as they apply to facilities not required to obtain a permit under 40 CFR part 70, can be approved. This mechanism will require PADEP to submit a delegation request letter to EPA following EPA notification of a new Federal requirement. EPA will grant the delegation request, if appropriate, by sending a letter to PADEP outlining the authority to implement and enforce the standard. The delegation will be finalized within 10 days of receipt of the delegation letter unless PADEP files a negative response. The official notice of delegation of additional emission standards will be published in the **Federal Register.** As noted earlier, PADEP's program to implement and enforce all emission standards promulgated under 40 CFR part 63, as they apply to sources subject to the permitting requirements of 40 CFR part 70, was previously approved on January 5, 1998.

The notification and reporting provisions in 40 CFR part 63 requiring the owners or operators of affected sources to make submissions to the Administrator shall be met by sending such submissions to PADEP and EPA Region III.

If at any time there is a conflict between a PADEP regulation and a Federal regulation, the Federal regulation must be applied if it is more stringent than that of PADEP. EPA is responsible for determining stringency between conflicting regulations. If PADEP does not have the authority to enforce the more stringent Federal regulation, it shall notify EPA Region III in writing as soon as possible, so that this portion of the delegation may be revoked.

If EPA determines that PADEP's procedure for enforcing or implementing the 40 CFR part 63 requirements is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part in accordance with the procedures set out in 40 CFR 63.96(b).

Certain provisions of 40 CFR part 63 allow only the Administrator of EPA to take further standard setting actions. In addition to the specific authorities retained by the Administrator in 40 CFR 63.90(d) and the ''Delegation of

Authorities'' section for specific standards, EPA Region III is retaining the following authorities, in accordance with 40 CFR 63.91(g)(2)(ii):

(1) Approval of alternative non-opacity emission standards, e.g., 40 CFR 63.6(g) and applicable sections of relevant standards;

(2) Approval of alternative opacity standards, e.g., 40 CFR 63.9(h)(9) and applicable sections of relevant standards;

(3) Approval of major alternatives to test methods, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.7(e)(2)(ii) and (f) and applicable sections of relevant standards;

(4) Approval of major alternatives to monitoring, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.8(f) and applicable sections of relevant standards; and

(5) Approval of major alternatives to recordkeeping and reporting, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.10(f) and applicable sections of relevant standards.

The following provisions are included in this delegation, in accordance with 40 CFR 63.91(g)(1)(i), and can only be exercised on a case-by-case basis. When any of these authorities are exercised, PADEP must notify EPA Region III in writing:

(1) Applicability determinations for sources during the title V permitting process and as sought by an owner/operator of an affected source through a formal, written request, e.g., 40 CFR 63.1 and applicable sections of relevant standards [1];

(2) Responsibility for determining compliance with operation and maintenance requirements, e.g., 40 CFR 63.6(e) and applicable sections of relevant standards;

(3) Responsibility for determining compliance with non-opacity standards, e.g., 40 CFR 63.6(f) and applicable sections of relevant standards;

(4) Responsibility for determining compliance with opacity and visible emission standards, e.g., 40 CFR 63.6(h) and applicable sections of relevant standards;

(5) Approval of site-specific test plans [2], e.g., 40 CFR 63.7(c)(2)(i) and (d) and applicable sections of relevant standards;

(6) Approval of minor alternatives to test methods, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.7(e)(2)(i) and applicable sections of relevant standards;

(7) Approval of intermediate alternatives to test methods, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.7(e)(2)(ii) and (f) and applicable sections of relevant standards;

(8) Approval of shorter sampling times/volumes when necessitated by process variables and other factors, e.g., 40 CFR 63.7(e)(2)(iii) and applicable sections of relevant standards;

(9) Waiver of performance testing, e.g., 40 CFR 63.7 (e)(2)(iv), (h)(2), and (h)(3) and applicable sections of relevant standards;

(10) Approval of site-specific performance evaluation (monitoring) plans [3], e.g., 40 CFR 63.8(c)(1) and (e)(1) and applicable sections of relevant standards;

(11) Approval of minor alternatives to monitoring methods, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.8(f) and applicable sections of relevant standards;

(12) Approval of intermediate alternatives to monitoring methods, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.8(f) and applicable sections of relevant standards;

(13) Approval of adjustments to time periods for submitting reports, e.g., 40 CFR 63.9 and 63.10 and applicable sections of relevant standards; and

(14) Approval of minor alternatives to recordkeeping and reporting, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.10(f) and applicable sections of relevant standards.

As required, PADEP and EPA Region III will provide the necessary written, verbal and/or electronic notification to ensure that each agency is fully informed regarding the interpretation of applicable regulations in 40 CFR part 63. In instances where there is a conflict between a PADEP interpretation and a Federal interpretation of applicable regulations in 40 CFR part 63, the Federal interpretation must be applied if it is more stringent than that of PADEP. Written, verbal and/or electronic notification will also be used to ensure that each agency is informed of the compliance status of affected sources in Pennsylvania. The PADEP will comply with all of the requirements of 40 CFR 63.91(g)(1)(ii).

Quarterly reports will be submitted to EPA by PADEP to identify sources determined to be applicable during that quarter.

Although PADEP has primary authority and responsibility to implement and enforce the hazardous air pollutant general provisions and hazardous air pollutant emission standards for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning and secondary lead smelting, nothing shall preclude, limit, or interfere with the authority of EPA to exercise its enforcement, investigatory, and information gathering authorities concerning this part of the Act.

IV. Final Action

EPA is approving PADEP's request for delegation of authority to implement and enforce its hazardous air pollutant regulations for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning and secondary lead smelting which have been adopted by reference from 40 CFR part 63, subparts M, N, O, T and X, respectively. This approval will automatically delegate future amendments to these regulations. In addition, EPA is approving of PADEP's mechanism for receiving delegation of future hazardous air pollutant regulations which it adopts unchanged from the Federal requirements. This mechanism entails submission of a delegation request letter to EPA following EPA notification of a new Federal requirement. This action pertains only to sources which are not required to obtain an operating permit, in accordance with 40 CFR part 70. The delegation of authority shall be administered in accordance with the terms outlined in section IV., above. This delegation of authority is codified in 40 CFR 63.99. In addition, PADEP's delegation of authority to implement and enforce 40 CFR part 63 emission standards at sources required to obtain an operating permit in accordance with 40 CFR part 70, approved by EPA

[1] Applicability determinations are considered to be nationally significant when they:

(i) Are unusually complex or controversial;

(ii) Have bearing on more than one state or are multi-Regional;

(iii) Appear to create a conflict with previous policy or determinations;

(iv) Are a legal issue which has not been previously considered; or

(v) Raise new policy questions and shall be forwarded to EPA Region III prior to finalization.

Detailed information on the applicability determination process may be found in EPA document 305–B–99–004 *How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring,* dated February 1999. The PADEP may also refer to the Compendium of Applicability Determinations issued by the EPA and may contact EPA Region III for guidance.

[2] The PADEP will notify EPA of these approvals on a quarterly basis by submitting a copy of the test plan approval letter. Any plans which propose major alternative test methods or major alternative monitoring methods shall be referred to EPA for approval.

[3] The PADEP will notify EPA of these approvals on a quarterly basis by submitting a copy of the performance evaluation plan approval letter. Any plans which propose major alternative test methods or major alternative monitoring methods shall be referred to EPA for approval.

Region III on January 5, 1998 is codified in 40 CFR 63.99.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial rule and anticipates no adverse comment because PADEP's request for delegation of the perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning and secondary lead smelting and it's request for automatic delegation of future amendments to these rules and future standards, when specifically identified, does not alter the stringency of these regulations and is in accordance with all program approval regulations. However, in the ''Proposed Rules'' section of today's **Federal Register,** EPA is publishing a separate document that will serve as the proposal to approve of PADEP's request for delegation if adverse comments are filed. This rule will be effective on November 13, 2001 without further notice unless EPA receives adverse comment by October 15, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing requests for rule approval under CAA section 112, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove requests for rule approval under CAA section 112 for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a request for rule approval under CAA section 112, to use VCS in place of a request for rule approval under CAA section 112 that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the approval of PADEP's delegation of authority for the hazardous air pollutant emission standards for perchloroethylene dry cleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilizers, halogenated solvent cleaning and secondary lead smelters (CAA section 112), may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 63

Environmental proteciton, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations.

Dated: September 5, 2001.

Judith M. Katz,

Director, Air Protection Division, Region III.

40 CFR part 63 is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(38) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(38) Pennsylvania.

(i) Pennsylvania is delegated the authority to implement and enforce all existing and future unchanged 40 CFR part 63 standards at major sources, as defined in 40 CFR part 70, in accordance with the delegation agreement between EPA Region III and the Pennsylvania Department of Environmental Protection, dated January 5, 1998, and any mutually acceptable amendments to that agreement.

(ii) Pennsylvania is delegated the authority to implement and enforce all existing 40 CFR part 63 standards and all future unchanged 40 CFR part 63 standards, if delegation is requested by the Pennsylvania Department of Environmental Protection and approved by EPA Region III, at sources not subject to the permitting requirements of 40 CFR part 70, in accordance with the final rule, dated September 13, 2001, effective November 13, 2001, and any mutually acceptable amendments to the terms described in the direct final rule.

* * * * *

[FR Doc. 01–22990 Filed 9–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7054–5]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds 11 new sites to the NPL; all to the General Superfund Section of the NPL.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be October 15, 2001.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center; Office of Emergency and Remedial Response (mail code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. What are CERCLA and SARA?
B. What is the NCP?
C. What is the National Priorities List (NPL)?
D. How are Sites Listed on the NPL?
E. What Happens to Sites on the NPL?
F. How are Site Boundaries Defined?
G. How are Sites Removed from the NPL?
H. Can Portions of Sites be Deleted from the NPL as They Are Cleaned Up?
I. What is the Construction Completion List (CCL)?
II. Availability of Information to the Public
A. Can I Review the Documents Relevant to this Final Rule?
B. What Documents are Available for Review at the Headquarters Docket?
C. What Documents are Available for Review at the Regional Docket?
D. How Do I Access the Documents?
E. How Can I Obtain a Current List of NPL Sites?
III. Contents of This Final Rule
A. Additions to the NPL
B. Status of NPL
C. What did EPA Do with the Public Comments It Received?
D. Clarification of Boundaries for Phoenix-Goodyear Airport Site
IV. Executive Order 12866
A. What is Executive Order 12866?
B. Is this Final Rule Subject to Executive Order 12866 Review?
V. Unfunded Mandates
A. What is the Unfunded Mandates Reform Act (UMRA)?
B. Does UMRA Apply to This Final Rule?
VI. Effects on Small Businesses
A. What is the Regulatory Flexibility Act?
B. How Has EPA Complied with the Regulatory Flexibility Act?
VII. Possible Changes to the Effective Date of the Rule
A. Has This Rule Been Submitted to Congress and the General Accounting Office?
B. Could the Effective Date of This Final Rule Change?
C. What Could Cause the Effective Date of This Rule to Change?
VIII. National Technology Transfer and Advancement Act
A. What is the National Technology Transfer and Advancement Act?
B. Does the National Technology Transfer and Advancement Act Apply to this Final Rule?
IX. Executive Order 12898
A. What is Executive Order 12898?
B. Does Executive Order 12898 Apply to This Final Rule?
X. Executive Order 13045
A. What is Executive Order 13045?
B. Does Executive Order 13045 Apply to This Final Rule?
XI. Paperwork Reduction Act
A. What is the Paperwork Reduction Act?
B. Does the Paperwork Reduction Act Apply to This Final Rule?
XII. Executive Orders on Federalism
What Are The Executive Orders on Federalism and Are They Applicable to This Final Rule?
XIII. Executive Order 13084
What is Executive Order 13084 and Is It Applicable to this Final Rule?
XIV. Executive Order 13175
A. What is Executive Order 13175?
B. Does Executive Order 13175 Apply to This Final Rule?
XV. Executive Order 13211
A. What is Executive Order 13211?
B. Is this Rule Subject to Executive Order 13211?

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on June 14, 2001 (66 FR 32235).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a remedial investigation/ feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of August 23, 2001, the Agency has deleted 239 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of August 23, 2001, EPA has deleted 24 portions of 23 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL.

As of August 23, 2001, there are a total of 773 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Availability of Information to the Public

A. Can I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the ''Support Document for the Revised National Priorities List Final Rule—September 2001.''

C. What Documents Are Available for Review at the Regional Dockets?

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional dockets.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917.

The contact information for the Regional dockets is as follows:

Ellen Culhane, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1225.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Lauren Brantley, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

Robert Phillips, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–6699.

E. How Can I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at http://www.epa.gov/superfund/ (look under the Superfund sites category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Addition to the NPL

This final rule adds 11 sites to the NPL; all to the General Superfund Section of the NPL. Table 1 presents the 11 sites in the General Superfund Section. Sites in the tables are arranged alphabetically by State.

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION

State and site name	City/County
CA Casmalia Resources	Casmalia.
MS American Creosote Works, Inc.	Louisville.
MT Barker Hughesville Mining District	Barker.
MT Carpenter Snow Creek Mining District	Neihart.
NC Barber Orchard	Waynesville.
NY MacKenzie Chemical Works, Inc	Central Islip.
PA Valmont TCE	Hazle Township and West Hazleton.
PA Watson Johnson Landfill	Richland Township.
UT Bountiful/Woods Cross 5th South PCE Plume	Bountiful/Woods Cross.
VT Ely Copper Mine	Vershire.
WA Lower Duwamish Waterway	Seattle.

Number of Sites Added to the General Superfund Section: 11.

B. Status of NPL

With the 11 new sites added to the NPL in today's final rule; the NPL now contains 1,240 final sites; 1,080 in the General Superfund Section and 160 in the Federal Facilities Section. With a separate rule (published elsewhere in today's **Federal Register**) proposing to add 17 new sites to the NPL, there are now 72 sites proposed and awaiting final agency action, 65 in the General Superfund Section and 7 in the Federal Facilities Section. Final and proposed sites now total 1,312. (These numbers reflect the status of sites as of August 23, 2001. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

C. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule. The Barker-Hughesville Mining District, Bountiful/Woods Cross 5th South PCE Plume, Carpenter Snow Creek Mining District, and Lower Duwamish Waterway sites were proposed on December 1, 2000 (65 FR 75215). The Barber Orchard site was proposed on January 11, 2001 (66 FR 2380). The remaining sites were proposed on June 14, 2001 (66 FR 32287).

For the Casmalia Resources site, EPA received several comments supporting listing and one comment opposing listing from the Casmalia Community Group. None of the comments raised concerns with the HRS score or the technical basis for listing. The spokesperson for the Casmalia Community Group opposed listing on the basis of the perceived Superfund stigma and remedial funding issues. EPA will continue to work with the community to address these issues throughout the remedial process.

For the Ely Copper Mine site, EPA received one comment from the West Fairlee Historical Society concerning future response activities. The West Fairlee Historical Society requested that EPA protect the historical sites, landmarks, and artifacts presently found at the site. The comment did not address the NPL listing of the site.

EPA responded to all relevant comments received on the following sites: Barker-Hughesville Mining District, Bountiful/Woods Cross 5th S. PCE Plume, Lower Duwamish Waterway, and Barber Orchard. EPA's responses to site-specific public comments are addressed in the ''Support Document for the Revised National Priorities List Final Rule—September 2001.''

For the remaining sites, EPA received no comments or only comments supporting the listing of the sites to the NPL and therefore, EPA is placing them on the final NPL at this time.

D. Clarification of Boundaries for Phoenix-Goodyear Airport Site

The Phoenix-Goodyear Airport (PGA) site was proposed to the NPL on September 3, 1983 (48 FR 40658). EPA is clarifying the land north of Van Buren Road in Goodyear, Arizona, is not part of the PGA Superfund site. Although the contaminated groundwater plume, which is part of the site, has migrated under the land north of Van Buren Road, the land has not been identified as contaminated with hazardous substances. Superfund maps of the site should reflect the clarification published in this notice.

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Final Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. How Has EPA Complied With the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of a hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

VII. Possible Changes to the Effective Date of the Rule

A. Has This Rule Been Submitted to Congress and the General Accounting Office?

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

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause the Effective Date of This Rule to Change?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214, 1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

VIII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

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

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

IX. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Final Rule?

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

X. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

XI. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XII. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Final Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

XIII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Final Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Under section 3(b) of Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. The addition of sites to the NPL will not impose any substantial direct compliance costs on Tribes. While Tribes may incur costs from participating in the investigations and cleanup decisions, those costs are not compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

XIV. Executive Order 13175

A. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

B. Does Executive Order 13175 Apply to This Final Rule?

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

XV. Executive Order 13211

A. What Is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

B. Is This Rule Subject to Executive Order 13211?

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866 (See discussion of Executive Order 12866 above.)

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 5, 2001

Michael H. Shapiro,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

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

2. Table 1 of appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes[a]
* * *	* * *	* *	*
CA	Casmalia Resources	Casmalia	
* * *	* * *	* *	*
MS	American Creosote Works, Inc	Louisville	
* * *	* * *	* *	*
MT	Barker Hughesville Mining District	Barker	
* * *	* * *	* *	*
MT	Carpenter Snow Creek Mining District	Neihart	
* * *	* * *	* *	*
NC	Barber Orchard	Waynesville	
* * *	* * *	* *	*
NY	MacKenzie Chemical Works, Inc	Central Islip	
* * *	* * *	* *	*
PA	Valmont TCE	Hazle Township and West Hazleton	
* * *	* * *	* *	*
PA	Watson Johnson Landfill	Richland Township	
* * *	* * *	* *	*
UT	Bountiful/Woods Cross 5th South PCE Plume	Bountiful/Woods Cross	
* * *	* * *	* *	*
VT	Ely Copper Mine	Vershire	
* * *	* * *	* *	*
WA	Lower Duwamish Waterway	Seattle	
* * *	* * *	* *	*

[a] A=Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤ 28.50).
C=Sites on Construction Completion list.
S=State top priority (included among the 100 top priority sites regardless of score).
P=Sites with partial deletion(s).

* * * * *

[FR Doc. 01–22741 Filed 9–12–01; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket Nos. 00–258 and 95–18, IB Docket No. 99–81; FCC 01–224]

Introduction of New Advanced Mobile and Fixed Terrestrial Wireless Services; Use of Frequencies Below 3 GHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document resolves issues raised in petitions for reconsideration of a prior Commission decision adopting a band arrangement for the 1990–2025 MHz and 2165–2200 MHz Mobile Satellite Service bands. The action is taken to coordinate our actions in this proceeding with various pending matters involving the Mobile Satellite Service and to respond to the outstanding petitions.

DATES: Effective September 13, 2001.

FOR FURTHER INFORMATION CONTACT: John Spencer, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Memorandum Opinion and Order (MO&O) portion of the Commission's Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in ET Docket No. 00–258, ET Docket No. 95–18, and IB Docket No. 99–81, adopted August 9, 2001, and released August 20, 2001. The Further Notice of Proposed Rulemaking portion of this decision is published elsewhere in this edition of the **Federal Register**. The complete text of this Memorandum Opinion and Order and Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554.

Synopsis of the MO&O

1. In this MO&O, together with the associated Further Notice of Proposed Rulemaking, the Commission continues to explore possible use of frequency bands below 3 GHz to support the introduction of new advanced mobile and fixed terrestrial wireless services (advanced wireless services), including third generation (3G) and future generations of wireless systems. The MO&O resolves in part two petitions for reconsideration of decisions the Commission made in a Report and Order in August 2000 (R&O), which adopted licensing and service rules for the 2 GHz Mobile Satellite Service (MSS), and which provided spectrum for all then-pending systems. The R&O can be found at 65 FR 59140, October 4, 2000. Two parties, Globalstar, L.P. (Globalstar) and Final Analysis Communication Services, Inc. (Final Analysis) filed timely requests for reconsideration of the R&O.

2. Globalstar sought reconsideration of the Commission's decisions that two blocks of 3.5 megahertz each is a sufficient minimum amount of spectrum for each operator, to defer establishing a mechanism for redistributing abandoned spectrum, and not to adopt Globalstar's proposed ''all-shared'' licensing arrangement. Final Analysis argued that the Commission should have made abandoned spectrum available not just for 2 GHz MSS systems proposing voice (among other) services, but to all MSS proponents, including those proposing or providing exclusively non-voice services. Globalstar and Final Analysis also sought reconsideration of the Commission's decision to reserve spectrum for system expansion by systems that target service to unserved areas. Final Analysis asked that eligibility to apply for the expansion spectrum not be limited to 2 GHz MSS systems, and that other MSS systems be permitted to apply for the reserved spectrum.

3. The MO&O grants in part Globalstar's and Final Analysis's petitions for reconsideration. Specifically, the Commission reconsiders the decision in the R&O to defer ''until after achievement of each of our system implementation milestones'' evaluation of whether to redistribute abandoned spectrum or make it available to new entrants. The Commission also reconsiders its decision to reserve a segment of the 2 GHz MSS spectrum for system expansion.

4. The MO&O denies, however, Globalstar's petition for reconsideration insofar as it sought adoption of its ''all-shared'' licensing arrangement. The MO&O also denies Final Analysis's request for reconsideration of the Commission's decision to defer the issue of enhanced 911 (E911) requirements for 2GHz MSS proponents until the matter can be more appropriately addressed in the Global Mobile Personal Communications by Satellite Proceeding. (*See* Notice of Proposed Rulemaking in IB Docket No. 99–67, 64 FR 16687, April 6, 1999.)

Ordering Clauses

5. The petition for reconsideration of the 2 GHZ MSS R&O filed by Globalstar, L.P. is granted to the extent indicated and is otherwise denied.

6. The petition for reconsideration of the 2 GHz MSS R&O filed by Final Analysis Communications Services, Inc., is granted to the extent indicated and is otherwise denied.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 01–23046 Filed 9–12–01; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

Toll Free Service Access Codes

CFR Correction

In Title 47 of the Code of Federal Regulations, parts 40 to 69, revised as of October 1, 2000, part 52 is corrected by adding § 52.111, to read as follows:

§ 52.111 Toll free number assignment.

Toll free numbers shall be made available on a first–come, first–served basis unless otherwise directed by the Commission.

[FR Doc. 01–55527 Filed 9–12–01; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 091001A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the pollock

total allowable catch (TAC) for Statistical Area 630.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 10, 2001, until 1200 hrs, A.l.t., October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

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

Within any fishing year, under harvest or over harvest of a seasonal allowance of pollock may be added to or subtracted from the subsequent seasonal allowances of pollock in a manner to be determined by the Administrator, Alaska Region, NMFS (Regional Administrator), provided that a revised seasonal allowance does not exceed 30 percent of the annual TAC apportionment (§ 679.20(a)(5)(ii)(C)). The combined A, B, and C season allowance of the pollock TAC in Statistical Area 630 is 16,821 metric tons (mt), as established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001 and 66 FR 37167, July 17, 2001). The Regional Administrator has determined that the A and B seasonal catch was in excess of the allowances by 2,050 mt and that the excess shall be proportionately subtracted from the subsequent seasonal allowances. The Regional Administrator hereby decreases the C season pollock TAC by 1,118 mt. In accordance with § 679.20(a)(5)(ii)(C), the C season allowance of pollock TAC in Statistical Area 630 is 7,492 mt.

In accordance with § 679.20(d)(1)(i), the Regional Administrator, has determined that the C season allowance of the pollock TAC in Statistical Area 630 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,292 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the seasonal allocation of pollock in Statistical Area 630 constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the seasonal allocation of pollock in Statistical Area 630 constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 10, 2001.

Bruce Morehead,

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

[FR Doc. 01–23006 Filed 9–10–01; 2:46 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 66, No. 178

Thursday, September 13, 2001

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 00–002–1]

Brucellosis in Sheep, Goats, and Horses; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the brucellosis indemnity regulations to allow us to pay indemnity for sheep, goats, and horses destroyed because of brucellosis. This action would make it easier to eliminate affected herds/flocks and infected animals as sources of infection by encouraging herd and flock owners to cooperate with our brucellosis eradication program. This action is intended to help reduce the incidence of brucellosis and the likelihood of it spreading within the United States.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by November 13, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–002–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–002–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Valerie Ragan, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7708.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease caused by bacteria of the genus *Brucella*. It affects both animals and humans. In its principal animal hosts, it causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. There is no economically feasible treatment for brucellosis in livestock. In humans, brucellosis initially causes flu-like symptoms, but the disease may develop into a variety of chronic conditions, including arthritis. Humans can be treated for brucellosis with antibiotics.

Brucellosis is mainly a disease of cattle, bison, and swine. *Brucella abortus* affects mainly bovines; *B. suis* affects mainly swine. Goats, sheep, and horses are also susceptible to *B. abortus*. In horses, the disease is known as fistulous withers. A third strain, *B. melitensis*, affects mainly goats and sheep.

In the United States, goats, sheep, and horses are rarely infected with *B. abortus* or *B. melitensis*. When they are, it is almost always because they have been in direct contact with infected animals or in an environment contaminated by discharges from infected animals.

The continued presence of brucellosis in a herd or flock seriously threatens the health of other animals. To prevent any possible spread of infection, we ask livestock owners to promptly destroy all infected and exposed animals. To encourage them, we pay Federal indemnity for certain cattle, bison, and swine destroyed because of brucellosis. Regulations governing indemnity for cattle, bison, and swine are contained in 9 CFR part 51.

Animals infected with brucellosis must be quarantined. Quarantining is lengthy and expensive for both the owner and the U.S. Department of Agriculture (USDA). USDA must pay to have the quarantined herd or flock tested periodically, until it is found to be free of brucellosis. In the interim, the owner may not sell or move any breeding animals, except for slaughter. This means a financial loss for the animal owner, as slaughter animals generally receive lower prices than breeding animals. Without financial incentives to destroy infected animals, some owners choose to keep their affected herds or flocks, even though the animals must remain under quarantine.

Maintaining herds/flocks under quarantine also has another major drawback—it does not guarantee that brucellosis will not spread. Brucellosis spreads both directly and indirectly. For example, a quarantined animal may jump the fence and spread disease directly to adjacent herds, or a fox, dog, vulture, or other animal may move infective materials, such as placentas, from the quarantined area to other pastures where nonquarantined livestock can come in contact with it. For these reasons, it is important to remove infected animals rapidly.

State, Federal, and industry efforts have almost completely eliminated brucellosis in the United States. *B. abortus* and *B. suis* are now present only in a few areas. As of December 2000, there were no longer any cattle herds in the United States affected with *B. abortus*. *B. melitensis* is not known to exist in the United States at this time. However, *B. melitensis* does exist in Mexico. In 1999, one herd of mixed goats and sheep in southern Texas was destroyed because they were found to be infected with *B. melitensis*. This was the first known case of *B. melitensis* in the United States since the 1970's.

We believe our current indemnity program is sufficient to encourage owners of affected cattle herds to allow them to be destroyed. However, goats, sheep, and horses can spread brucellosis to other livestock and to humans. The brucellosis eradication program is in its final critical stages. Removing all infected animals and herds is ultimately the only effective means of eradicating the disease. Being able to pay indemnity for goats, sheep, and horses, as we do for cattle, bison, and swine, is a crucial tool to encourage livestock owners to destroy infected or exposed animals and eliminate the last sources of infection.

The proposed indemnity program for goats, sheep, and horses that is the subject of this proposed rule would be a voluntary program. If producers respond positively, animals that pose a disease threat would be destroyed. This would advance our program to eradicate brucellosis in the United States. If brucellosis is eradicated, U.S. livestock will be valued higher in international markets. In addition, brucellosis-related restrictions on the movement of livestock within the United States will also be removed, reducing costs for U.S. producers. These factors together indicate that U.S. livestock and livestock products will be more competitive in both national and international markets.

Therefore, we are proposing to amend the regulations in part 51 by adding a new subpart containing provisions for an indemnity program for goats, sheep, and horses.

We modeled these proposed regulations on our existing indemnity regulations for cattle and bison, making adjustments as necessary to better address brucellosis in goats, sheep, and horses, and we reorganized and rewrote the requirements to make them easier to understand. Definitions of words used in the subpart are contained in proposed § 51.20. Proposed § 51.21 contains a statement that we will cooperate with State authorities to eradicate brucellosis and pay indemnity for animals destroyed because of brucellosis. The remainder of the proposed regulations are contained in §§ 51.22 through 51.33.

Goats and sheep are herd/flock animals. A single infected animal in a herd or flock exposes all the animals in that herd/flock to the disease, and goats and sheep infected with brucellosis can easily spread it to other members of the herd/flock. Therefore, in order to eliminate any possibility of brucellosis spreading from a herd of goats, flock of sheep, or herd of mixed goats and sheep, all animals in the herd or flock must be destroyed, or depopulated. As a result, under our proposed regulations we would pay brucellosis indemnity for goats and sheep only if they are destroyed as part of a whole herd/flock depopulation (§§ 51.22(a) and 51.23(a) and (b)). An epidemiologist would have to determine if the herd/flock was affected. Whether to depopulate a herd/flock would be decided based on all available information about the affected herd/flock, including blood test results, culture results, and exposure to other animals.

Horses infected with brucellosis almost always become infected by contact with brucellosis-infected cattle, bison, swine, goats, or sheep. There is little evidence that horses play a significant role in spreading brucellosis, and we do not know of any case in the United States where an entire herd of horses has been affected with brucellosis. Therefore, horses would not be subject to the same whole herd depopulation requirement as sheep and goats. Rather, under our proposed regulations, individual horses tested and found to be infected with brucellosis would be eligible for indemnity (§ 51.23(c)).

Under the proposed regulations, the Administrator would authorize the payment of indemnity for approved herds/flocks or horses as long as: (1) Sufficient funds are available, (2) the State or area in which the animal is located is not under Federal quarantine, (3) the State has requested payment of Federal indemnity, or (4) the State has not requested a rate lower than the maximum. Prior to paying indemnity, the Veterinarian in Charge would have to have received proof that the animal or animals had been destroyed (§ 51.22(c)). These proposed regulations are the same as our current requirements for paying indemnity for cattle and bison destroyed because of brucellosis.

We would pay indemnity only for those animals that had been identified and disposed of according to our regulations. Proposed § 51.24 states that animals must be individually appraised, and that the indemnity amount will be the appraised fair market value minus the salvage value of the animal. The USDA will select and pay for an independent appraiser to determine that amount. There would be an upper limit of $20,000 on the amount of indemnity that would be paid for an individual horse. As the 1997 average U.S. sales price for a horse was $3,165, with State average sales prices ranging between $794 and $18,795, this proposed cap of $20,000 would potentially affect the owners of only the most expensive horses (e.g., purebred horses). Given that the proposed indemnity program would be voluntary, the owner of any horse would have the option of maintaining the horse in quarantine rather than destroying the horse and accepting an indemnity payment. The proposed regulations include instructions on how to prove that animals have been destroyed (§ 51.25), how to compile test records and identify animals for testing (§ 51.26), how to mark animals with identification showing they are to be destroyed (§ 51.27), how to move animals to slaughter or other locations (§ 51.28), and how to destroy animals (§ 51.29). There are time limits for marking animals with identification showing they are to be destroyed, specified in proposed § 51.27, and for destroying animals, specified in proposed § 51.29.

The regulations in proposed § 51.29 are modeled on our indemnity requirements for cattle affected with *B. abortus.* The only significant difference is that goats and sheep infected with *B. melitensis* could not be sent to slaughter. Instead, they would have to be destroyed and then buried, incinerated, or rendered in accordance with applicable State law. *B. melitensis* is easily transmitted by handling the carcasses of infected animals. Therefore, to protect slaughterhouse workers, we would require these animals to be disposed of by other means. *B. abortus* poses a very minimal risk to slaughterhouse workers, and infected animals can be safely slaughtered. Owners may, however, choose to bury, incinerate, or render carcasses of animals infected with *B. abortus.*

The proposed regulations require records on each animal destroyed. We would require records of tests and test results, and records showing the individual identification of animals tested and destroyed. These records would help us do three things: Ensure that the animals intended for destruction are actually infected or exposed to brucellosis; track individual animals intended for destruction to be sure they are actually destroyed; and ensure that the animals we would be paying indemnity for are the same animals that were destroyed (§§ 51.26, 51.27, and 51.29).

In addition, we would require infected and exposed animals moving interstate to do so only under permit. The animals could only be moved interstate to slaughter. This is consistent with our regulations for cattle and bison. The animals would have to be accompanied directly to slaughter by an Animal and Plant Health Inspection Service (APHIS) or State representative, or moved in vehicles closed with official seals (§ 51.28). This would help ensure that animals are not diverted en route.

All the requirements for filing an indemnity claim are in proposed § 51.30. These proposed requirements are the same as under our indemnity program for cattle.

The regulations would also include cleaning and disinfecting requirements. Premises where infected animals have been held would have to be cleaned and disinfected within a stated time limit to ensure that new animals brought there do not contract brucellosis. These proposed requirements, which are found in § 51.31, are the same as our requirements under the cattle, bison, and swine indemnity program.

Proposed § 51.32 contains a lists of claims we would not allow. Proposed § 51.33 states that if an indemnity claim is paid for animals destroyed because of brucellosis, no other claims for indemnity will be paid for the same animals. These two sections are modeled on our current requirements concerning the payment of indemnity for cattle, bison, and swine destroyed because of brucellosis.

Miscellaneous

We are also proposing to make a minor, nonsubstantive change in part 51 to reflect the creation of new subparts A and B.

Executive Order 12866 and Regulatory Flexibility Act

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

Brucellosis is a contagious, costly disease of livestock. It affects mainly ruminants and swine. However, it may also infect other animals, including horses. In addition, it is contagious to humans. Because of the serious consequences of infection in its animal hosts, which include loss of young through abortion or birth of weak offspring, reduced milk production, infertility, weight loss, and lameness, and its rapid spread among animals and potential for human infection, brucellosis is considered one of the most serious livestock diseases. At present, there is no effective treatment for animals. Affected herds/flocks and infected animals can be quarantined. However, quarantining does not eliminate possible spread; only destroying infected and exposed animals ensures that the disease is not transmitted to other animals.

We are proposing to amend the brucellosis indemnity regulations to allow us to pay indemnity for sheep, goats, and horses destroyed because of brucellosis, which would make it easier to eliminate affected herds/flocks and infected animals as sources of infection and would encourage herd and flock owners to cooperate with our brucellosis eradication program. This proposed action is intended to help reduce the incidence of brucellosis and the likelihood of it spreading within the United States.

Goats and Sheep—Operations, Inventory, and Trade

It is estimated that there were approximately 9.8 million sheep and lambs in the United States in 1999.[1] Small farms[2] account for over 99 percent of farms raising sheep and lambs, while farms considered to be large account for less than 0.3 percent of farms raising sheep and lambs. About 85 percent of all farms raising sheep and lambs have fewer than 100 animals each; these farms collectively accounted for about 17 percent of domestic sheep and lamb holdings. On the other hand, large sheep operations with 5,000 or more sheep accounted for about 26 percent of domestic sheep and lamb holdings.

According to the most recent figures available, there were approximately 57,925 goat producers in the United States in 1997, who raised about 1,989,799 goats, valued at approximately $74 million.[3] With an average holding of about 35 goats, most, if not all, goat operations are relatively small and earn less than $500,000.

The United States has limited foreign trade in live sheep, live goats, and their products. Figures for 1999 are shown in table 1.

TABLE 1.—SHEEP AND GOAT IMPORTS AND EXPORTS, 1999

Item	Imports		Exports	
	Number	Value, in millions	Number	Value, in millions
Sheep	51,999	$5.01	445,307	$18.96
Goats	1,166	0.32	72,950	3.03
Total	53,165	5.33	518,257	21.99

Source: *World Trade Atlas,* June 2000.

The United States also imports and exports sheep and goat meat. During 1999, U.S. imports totaled 111 million pounds of sheep and goat meat, valued at $183.74 million. Exports totaled 5.6 million pounds, valued at $6.46 million.

Horses—Operations, Inventory, and Trade

According to the *1997 Census of Agriculture*, there were 375,218 farms in the United States with a total 2,427,277 horses. During 1997, 79,516 of these farms sold 325,306 horses for about $1.03 billion, with an average value per horse of $3,165.[4] Using this average value, the total market value of horses in the United States was $10.847 billion in 1997. Over 98 percent of farms with horses had gross annual sales of less than $500,000 and thus are considered to be small entities according to the Small Business Administration size standards.[5]

The contribution of horses to the economy of the Nation is substantial. A study for the American Horse Council showed that the horse industry directly contributed about $25.3 billion to the gross domestic product. The horse industry's indirect and induced impact on the national economy is about $112 billion.

Horses also play an important role in the international trade of the United States. Figures for 1999 are shown in table 2.

[1] USDA, National Agricultural Statistics Service (NASS), *Agricultural Statistics 2000,* United States Government Printing Office, Washington, DC.

[2] Based on size standards established by the Small Business Administration (SBA) for animal production, a sheep and goat business with less than $0.5 million gross annual sales qualifies as a small entity (13 CFR part 121).

[3] USDA, NASS, *1997 Census of Agriculture,* Tables 19, 20, and 25.

[4] USDA, NASS, *1997 Census of Agriculture*, Washington, DC, 1997.

[5] Horse farms with less than $0.5 million in annual sales are classified as small entities according to the SBA size standards for animal production (13 CFR part 121). According to the *1997 Census of Agriculture*, an average farm had 6.5 horses, while according to the American Horse Council, 1.9 million people owned 6.9 million horses, yielding an average of 3.6 horses per owner.

TABLE 2.—HORSE IMPORTS AND EXPORTS, 1999

Animals	Imports		Exports	
	Number	Value, in millions	Number	Value, in millions
Purebred	3,677	$24.33	26,494	$132.69
Nonpurebred	28,081	301.42	52,206	160.17
Total	31,758	325.75	78,700	292.86

Source: *World Trade Atlas*, June 2000.

Amount of Indemnity

Under this proposed rule, the amount of indemnity would be the fair market value of each animal, minus salvage, if any, received for the animal. There would usually be no salvage value for sheep and goats destroyed because of *B. melitensis*, as the carcass would have to be buried, incinerated, or rendered after the animal was destroyed. Animals would have to be individually appraised before destruction to determine their fair market value. An independent appraiser selected by the Administrator and paid by USDA would conduct all appraisals.

It is impossible to estimate indemnity expenditures, as market values vary depending upon the specific animal. However, as of January 1, 1999, the average national sales price of a sheep was $88, while as of January 1, 1998, it was $102. These prices reflect the average of the sale of millions of slaughter sheep, and the sale of a few thousand registered breeding sheep.[6]

As of January 1, 1999, the average sales price for goats was $35 per head. As in the case of sheep, market values vary, depending whether the animal is a slaughter goat, angora goat, dairy goat, crossbred or purebred, etc.

There is much variation in the price of horses. In 1997, the average U.S. sales price for a horse was $3,165. Purebred horses are more expensive than nonpurebred. State average sales prices ranged between $794 and $18,795, with a median price of about $1,860 per horse. The median indicates that the market value of a horse in 50 percent of States was above $1,860 per head and in 50 percent below it.

At this time, there are no goats, sheep, or horses in the United States known to be infected with *B. abortus* or *B. melitensis*. We estimate that fewer than a dozen herds, flocks, or individual animals would be eligible for indemnity under this proposed rule by the time brucellosis is eradicated from the United States.

[6] The average price for registered breeding sheep is in the range of $300, with some selling for thousands of dollars.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–002–1. Please send a copy of your comments to: (1) Docket No. 00–002–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would provide for the Department to pay indemnity for the voluntary depopulation of herds of goats, flocks of sheep, and mixed herds of goats and sheep affected with *B. abortus* or *B. melitensis* and for the voluntary slaughter of individual horses infected with brucellosis. Implementing the proposed indemnity program would necessitate the use of several information collection activities, including the completion of indemnity claims, test records, and permits; the use of official seals and animal identification; and the submission of proof of destruction and requests for the extension of certain program-related deadlines.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Sheep, goat, and horse owners who may be eligible to participate in a brucellosis indemnity program; State and accredited veterinarians; and slaughter plant operators.

Estimated annual number of respondents: 4.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 4.

Estimated total annual burden on respondents: 1 hour.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 51

Animal diseases, Cattle, Goats, Hogs, Horses, Indemnity payments, Reporting and recordkeeping requirements, Sheep.

Accordingly, we propose to amend 9 CFR part 51 as follows:

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

1. The authority citation for part 51 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.22, 2.80, and 371.4.

§§ 51.1 through 51.10 [Designated as subpart A]

2. Sections 51.1 through 51.10 would be designated as Subpart A—Indemnity for Cattle, Bison, and Swine.

§ 51.1 [Amended]

2. In § 51.1, in the definition of *Permit*, the word ''Part'' would be removed and the word ''subpart'' added in its place.

3. A new Subpart B—Indemnity for Sheep, Goats, and Horses, §§ 51.20 through 51.33, would be added to read as follows:

Subpart B—Indemnity for Sheep, Goats, and Horses

Sec.

51.20 Definitions.
51.21 Cooperation with States.
51.22 Payment to owners for goats, sheep, and horses destroyed.
51.23 Eligibility for indemnity.
51.24 Maximum per-head indemnity amounts.
51.25 Proof of destruction.
51.26 Record of tests.
51.27 Identification of goats, sheep, and horses to be destroyed.
51.28 Moving goats, sheep, and horses to be destroyed.
51.29 Destruction of animals; time limit.
51.30 Claims for indemnity.
51.31 Disinfecting premises, conveyances, and materials.
51.32 Claims not allowed.
51.33 Multiple indemnity payments.

§ 51.20 Definitions.

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Affected Herd/Flock. Any herd or flock in which any cattle, bison, breeding swine, sheep, or goat has been classified as a brucellosis reactor and which has not been released from quarantine.

Animal. Sheep, goats, and horses.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

Appraisal. An estimate of the fair market value of an animal to be destroyed because of brucellosis.

Brucellosis exposed. Except for brucellosis reactors, animals that are part of a herd known to be affected, or are in a quarantined feedlot or a quarantined pasture, or are brucellosis suspects, or that have been in contact with a brucellosis reactor for a period of 24 hours or more, or for a period of less than 24 hours if the brucellosis reactor has aborted, calved, or farrowed within the past 30 days or has a vaginal or uterine discharge.

Brucellosis reactor animal. Any cattle, bison, or swine classified as a brucellosis reactor as provided in the definition of official test in § 78.1 of this chapter, and any sheep, goat, or horse classified as a brucellosis reactor as provided in § 51.23 of this subpart.

Condemn. The determination made by an APHIS representative, State representative, or accredited veterinarian that animals for which indemnity is sought under this subpart will be destroyed.

Designated brucellosis epidemiologist. An epidemiologist selected by the State animal health official and the Veterinarian in Charge to perform the functions required. The regional epidemiologist and the APHIS brucellosis staff must concur in the selection and appointment of the designated epidemiologist.

Destroyed. Condemned under State authority and slaughtered or otherwise dies.

Flock. Any group of sheep maintained on common ground for any purpose, or two or more groups of sheep under common ownership or supervision, geographically separated but which have an interchange or movement of animals without regard to health status.

Herd. Any group of goats, or mixed sheep and goats, maintained on common ground for any purpose, or two or more groups of goats, or two or more groups of mixed sheep and goats, under common ownership or supervision, geographically separated but which have an interchange or movement of animals without regard to health status.

Herd Depopulation. Removal by slaughter or other means of destruction of all sheep or goats in a flock or herd, or from a specific premises or under common ownership prior to restocking such premises with new animals.

Mortgage. Any mortgage, lien, or interest that is recorded under State law or identified in the indemnity claim form filed in accordance with this subpart, and held by any person other than the one claiming indemnity.

Official seal. A serially numbered metal strip consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged and which cannot be reused if opened, and is applied by a representative of the Veterinarian in Charge or the Sate animal health official.

Owner. Any person who has legal or rightful title to sheep, goats, and horses, whether or not the animals are subject to a mortgage.

Permit. An official document for movement of animals under this subpart issued by an APHIS representative, State representative, or accredited veterinarian listing the disease status and identification of the animal, where consigned, cleaning and disinfecting requirements and proof of slaughter certification.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company, or other legal entity.

Registered sheep and goats. Sheep and goats for which individual records of ancestry are recorded and maintained by a breed association whose purpose is the improvement of the species, and for which individual registration certificates are issued and recorded by such breed association.

State. Any State, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other territory or possession of the United States.

State representative. An individual employed in animal health activities by a State or a political subdivision thereof, and who is authorized by such State or political subdivision to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

Veterinarian in Charge. The APHIS veterinary official who is assigned by the Administrator to supervise and perform the official animal health work of APHIS in the State or area concerned, or any person authorized to act for the Veterinarian in Charge.

§ 51.21 Cooperation with States.

The Administrator has been delegated the authority to cooperate with the proper State authorities in the eradication of brucellosis and to pay indemnities for the destruction of brucellosis-reactor animals or brucellosis-exposed animals.

§ 51.22 Payment to owners for goats, sheep, and horses destroyed.

(a) The Administrator may authorize the payment of Federal indemnity by the U.S. Department of Agriculture to any owner whose goats, sheep, or horses are destroyed after having been approved for destruction by APHIS.[1] Goats or sheep must be destroyed as part of a whole herd/flock depopulation to be eligible for Federal indemnity.

(b) The amount of Federal indemnity will be determined in accordance with the regulations in this part that were in effect on the date infected animals were found, or the date that the whole-herd/flock depopulation or destruction of individual animals was approved.

(c) Prior to payment of indemnity, proof of destruction must be furnished to the Veterinarian in Charge.

§ 51.23 Eligibility for indemnity.

Owners of animals destroyed because of brucellosis are eligible to receive Federal indemnity for their animals if the animals are:

(a) Sheep and goats in a herd or flock that has been approved for whole herd/flock depopulation because of *B. abortus* or *B. melitensis.* A diagnosis of brucellosis must be made by a designated brucellosis epidemiologist,[2] based on test results, herd/flock history, and/or culture results. Any test used for cattle and bison under the APHIS official brucellosis eradication program (see part 78 of this chapter) may be used, but test results must be interpreted by a designated brucellosis epidemiologist;

(b) Sheep and goats that were obtained from a herd or flock that was subsequently found to be affected with *B. abortus* or *B. melitensis.* Epidemiological information such as test results, herd/flock history, and related evidence will be used to establish a probable date when the herd or flock was first affected with brucellosis. Animals removed from the herd or flock after that date will be considered exposed to the disease and eligible for indemnity; those removed before that date will not;

(c) Individual horses diagnosed with brucellosis. A diagnosis must be made by a designated brucellosis epidemiologist, based on epidemiological information or culture results, or positive results for brucellosis in accordance with one of the following tests:

Test	Positive results
Standard plate test (SPT)	If antibody titer positive at 1:100 dilution or higher
Standard tube test (STT)	If antibody titer positive at 1:100 dilution or higher
Rivanol test	If antibody titer positive at 1:50 dilution or higher
Particle concentration fluorescence immunoassay (PCFIA)	If reading is 0.3 or lower
Complement fixation test (CF)	If reading is 2+:20 dilution

§ 51.24 Maximum per-head indemnity amounts.

Owners of the types of animals listed in § 51.22 of this subpart are eligible to receive Federal indemnity for their animals. All animals must be individually appraised to determine their fair market value. The indemnity amount will be the appraised value minus the salvage value of the animal, up to a maximum of $20,000 per animal in the case of horses. An independent appraiser selected by the Administrator will conduct appraisals. APHIS will pay the cost of appraisals.

§ 51.25 Proof of destruction.

The Veterinarian in Charge will accept any of the following documents as proof of destruction:

(a) A postmortem report;

(b) A meat inspection certification of slaughter;

(c) A written statement by a State representative, APHIS representative, or accredited veterinarian attesting to the destruction of the animals;

(d) A written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animals;

(e) A permit (VS Form 1–27) consigning the animal from a farm or livestock market directly to a slaughter establishment; or

(f) In unique situations where none of the documents listed above are available, other similarly reliable forms of proof of destruction.

§ 51.26 Record of tests.

An APHIS representative, State representative, or accredited veterinarian will compile, on an APHIS-approved form, a complete test record for each animal. The claimant must provide any information necessary to complete the form. The test record must include the type of test and the test results for each animal. It must also include the individual identification of each tested animal. Any unique identification is acceptable. The animal's owner and the appropriate State veterinarian's office will each receive a copy of the test record.

§ 51.27 Identification of goats, sheep, and horses to be destroyed.

The claimant must ensure that any goats, sheep, and horses for which indemnity is claimed are marked with unique, individually numbered identification showing they are to be destroyed. This must be done within 15 days after the animals are condemned. The Veterinarian in Charge may extend the time limit to 30 days when the Veterinarian in Charge receives a request for extension prior to the expiration date of the original 15-day period, and when the Veterinarian in Charge determines that the extension will not adversely affect the brucellosis eradication program. However, the Administrator may extend the time limit beyond 30 days when unusual or

[1] The Administrator will authorize payment of Federal indemnity by the U.S. Department of Agriculture as provided in § 51.24: (a) As long as sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year; (b) in States or areas not under Federal quarantine; (c) in States requesting payment of Federal indemnity; and (d) in States not requesting a lower rate.

[2] Requirements for designated brucellosis epidemiologists are contained in Veterinary Services Memorandum No. 551.10. A copy of this memorandum may be obtained from an APHIS representative, the State Animal Health Official, or a State representative.

unforeseen circumstances occur that prevent or hinder the identification of the animal within 30 days, such as, but not limited to, floods, storms, or other Acts of God, which are beyond the control of the owner, or when identification is delayed due to requirements of another Federal agency.

§ 51.28 Moving goats, sheep, and horses to be destroyed.

Goats, sheep, and horses to be destroyed because of brucellosis must be accompanied by a permit and either:

(a) Accompanied directly to slaughter by an APHIS or State representative; or

(b) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

§ 51.29 Destruction of animals; time limit.

(a) The claimant must ensure that goats, sheep, and horses infected with or exposed to *B. abortus* are either:

(1) Sold under permit to a recognized slaughtering establishment;

(2) Moved to an approved stockyard for sale to a recognized slaughtering establishment; or

(3) Destroyed and buried, incinerated, or rendered in accordance with applicable State law.

(b) The claimant must ensure that goats and sheep destroyed because of *B. melitensis* are destroyed and buried, incinerated, or rendered in accordance with applicable State law.

(c) Indemnity will be paid under this part only if the animals are destroyed within 15 days after the date they are marked with identification showing they are to be destroyed. However, the Veterinarian in Charge may extend the time limit to 30 days if:

(1) The animals' owner asks the Veterinarian in Charge for an extension before the initial 15-day period expires, or the animals were sold for slaughter before the original 15-day period expires; and

(2) The Veterinarian in Charge determines that extending the time limit will not adversely affect the Brucellosis Eradication Program.

(d) The Administrator may extend the time limit beyond 30 days when unusual and unforeseen circumstances occur that prevent or hinder the destruction of the animals within 30 days, such as, but not limited to, floods, storms, or other Acts of God, which are beyond the control of the owner, or when destruction is delayed due to requirements of another Federal agency.

§ 51.30 Claims for indemnity.

(a) Claims for indemnity for goats, sheep, and horses destroyed because of brucellosis must be made using an indemnity claim form furnished by APHIS. On the form, the owner of the animals must certify whether the animals are subject to a mortgage. If the owner states there is a mortgage, the claim form must be signed by the owner and by each mortgage holder, consenting to the payment of any indemnity allowed to the owner. Payment will be made only if the claimant has submitted a complete indemnity claim form to the Veterinarian in Charge and the claim has been approved by the Veterinarian in Charge or by an APHIS representative designated by him or her. The Veterinarian in Charge or an APHIS representative designated by the Veterinarian in Charge will record on the APHIS indemnity claim form the amount of Federal and State indemnity payments that appear to be due to the owner of the animals. The owner of the animals will receive a copy of the completed APHIS indemnity claim form. The owner is responsible for paying all fees for holding the animals on the farm pending disposal and for all trucking fees.

(b) Claims for indemnity for registered sheep and registered goats must be accompanied by the animal's registration papers, issued in the name of the owner. If the registration papers are unavailable or if the animal is less than 1 year old and not registered at the time the claim for indemnity is submitted, the Veterinarian in Charge may grant a 60-day extension or the Administrator may grant an extension longer than 60 days for the presentation of registration papers. Any animal that is not registered but is eligible for registration at the time the claim is submitted will be considered unregistered unless the animal has been in the flock for less than 12 months.

§ 51.31 Disinfecting premises, conveyances, and materials.

All premises, including all structures, holding facilities, conveyances, and materials contaminated because they have been used by animals destroyed because of brucellosis, must be properly cleaned and disinfected in accordance with recommendations of the APHIS or State representative. Cleaning and disinfecting must be completed within 15 days from the date the animals were removed from the premises, except that the Veterinarian in Charge may extend the time limit for disinfection to 30 days when he or she receives a request prior the expiration date of the original 15 days, and when the Veterinarian in Charge determines that an extension will not adversely affect the Brucellosis Eradication Program. The Administrator may extend the time limit beyond 30 days when unusual and unforeseen circumstances occur that prevent or hinder disinfection of the premises, conveyances, and materials within 30 days, such as, but not limited to floods, storms, or other Acts of God, which are beyond the control of the owner. A premises may be exempted from such cleaning and disinfecting requirements if the APHIS or State representative recommends it in writing and the Veterinarian in Charge approves.

§ 51.32 Claims not allowed.

Claims for indemnity for goats, sheep, and horses destroyed because of brucellosis will not be allowed if any of the following circumstances exist:

(a) The claimant has failed to comply with any of the requirements of this part;

(b) The claim is based on a brucellosis test, and the person who administered the test was not properly trained, authorized, or certified at the time of the test;

(c) Testing of goats, sheep, and horses in the herd or flock for brucellosis was not done under APHIS or State supervision, or by an accredited veterinarian;

(d) There is substantial evidence that the claim is an unlawful or improper attempt to obtain indemnity; or

(e) If, at the time of test or condemnation, the animals belonged to or were upon the premises of any person to whom they had been sold for slaughter, shipped for slaughter, or delivered for slaughter.

§ 51.33 Multiple indemnity payments.

APHIS has indemnity programs for several other livestock diseases. However, if a claim is paid for indemnity for animals destroyed because of brucellosis, no other claims for indemnity will be paid for the same animals.

Done in Washington, DC, this 6th day of September 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–22981 Filed 9–12–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 81–ASW–27]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 206A, 206B, 206A–1, 206B–1, 206L, and 206L–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD) for Bell Helicopter Textron, Inc. (BHTI) Model 206A, 206B, 206A–1, 206B–1, 206L, and 206L–1 helicopters that currently establishes a retirement life for the main rotor trunnion (trunnion) based on hours time-in-service (TIS). This action would retain those requirements but would revise the AD to remove the trunnion, part number (P/N) 206–011–120–103, from the applicability. This proposal is prompted by the issuance of another AD for the BHTI Model 206L and 206L–1 helicopters that requires a different method of calculating the retirement life for the trunnions. The actions specified by this AD are intended prevent failure of the trunnion due to fatigue cracks and subsequent loss of control of the helicopter.

DATES: Comments must be received by November 13, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 81–ASW–27, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9–asw–adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 81–ASW–27.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 81–ASW–27, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The FAA issued AD 81–18–01, Amendment 39–4192 (46 FR 42651, August 24, 1981), to require a retirement life on the trunnions installed on BHTI Model 206A, 206B, 206A–1, 206B–1, 206L, and 206L–1 helicopters. That action was prompted by the FAA's determination that a retirement life should be imposed on the trunnion based on fatigue testing, fatigue analysis, and service experience. That condition, if not corrected, could result in failure of the trunnion due to fatigue cracks and subsequent loss of control of the helicopter.

Since the issuance of AD 81–18–01, the FAA has issued AD 99–17–19 (64 FR 45433, August 20, 1999) that required a different method of calculating the retirement life for the trunnion, part number (P/N) 206–011–120–103, installed on BHTI Model 206L series helicopters. AD 81–18–01 established a retirement life for certain trunnions based on hours TIS. AD 99–17–19 requires a retirement life based on a Retirement Index Number (RIN) for the trunnion, P/N 206–011–120–103, installed on the Model 206L series helicopters. This AD revises AD 81–18–01 to remove the trunnion, P/N 206–011–120–103, from the applicability of that AD so that the trunnions for those models will only be affected by the RIN retirement life as required by AD 99–17–19. However, the model 206L and 206L–1 helicopters must be included in this AD because the other trunnions affected by the AD may be installed on these helicopters.

Since we have identified an unsafe condition that is likely to exist or develop on other BHTI Model 206A, 206B, 206A–1, 206B–1, 206L, and 206L–1 helicopters of the same type designs, the proposed AD would revise AD 81–18–01. This AD would contain the same requirements as AD 81–18–01 but would remove trunnion, P/N 206–011–120–103, from the applicability of that AD.

The FAA estimates that since the requirements of the AD are not changed and fewer helicopters of U.S. registry will be affected by this proposed AD revision, there will be no additional cost impact from the AD revision on U.S. operators.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–4192 (46 FR 42651, August 24, 1981), and by adding a new airworthiness directive (AD) to read as follows:

Bell Helicopter Textron, Inc.: Docket No. 81–ASW–27. Revises AD 81–18–01, Amendment 39–4192, Docket No. 81–ASW–27.

Applicability

Model 206A, 206B, 206A–1, 206B–1, 206L, and 206L–1 helicopters, with main rotor (trunnion), part number (P/N) 206–010–104–3, 206–011–113–001, 206–011–120–001, or 206–011–113–103, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To prevent failure of the trunnion due to fatigue cracks, accomplish the following:

(a) Any trunnion, P/N 206–011–120–001, with 1100 or more hours time-in-service (TIS) must be retired from service within the next 100 hours TIS.

(b) Any trunnion, P/N 206–011–120–001, with less than 1100 hours TIS must be retired from service on or before attaining 1200 hours TIS.

(c) Any trunnion, P/N 206–010–104–3, and 206–011–113–001, with 2300 or more hours TIS must be retired from service within the next 100 hours TIS.

(d) Any trunnion, P/N 206–010–104–3, and 206–011–113–001, with less than 2300 hours TIS must be retired from service on or before attaining 2400 hours TIS.

(e) Any trunnion, P/N 206–011–113–103, with 4700 or more hours TIS must be retired from service within the next 100 hours TIS.

(f) Any trunnion, P/N 206–011–113–103, with less than 4700 hours TIS must be retired from service on or before attaining 4800 hours TIS.

(g) The retirement times, for the trunnions, established by this AD, are as follows:

P/N	Service life hours TIS
206–011–120–001	1200
206–010–104–3	2400
206–011–113–001	2400
206–011–113–103	4800

Note 2: The FAA issued AD 99–17–19 (64 FR 45433, August 20, 1999) to establish a retirement life for trunnion, P/N 206–011–120–103.

(h) This AD revises the Limitations section of the maintenance manual by establishing a retirement life of 1200 hours TIS for trunnion, P/N 206–011–120–001; 2400 hours TIS for P/N 206–010–104–3 and 206–011–113–001; and 4800 hours TIS for P/N 206–011–113–103.

Note 3: Bell Helicopter Textron Alert Service Bulletins 206–80–7 and 206L–80–9, both Revision B, and dated October 15, 1980, pertain to the subject of this AD.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(j) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on September 4, 2001.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–22947 Filed 9–12–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 161

Announcement of Receipt of Notice of Proposed Restriction on Stage 2 Operations Supplemental Analysis at Naples Municipal Airport, Naples, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed restriction on Stage 2 operations.

The Federal Aviation Administration (FAA) has been notified by the Naples Municipal Airport. That it proposes to prohibit operations by aircraft certificated as Stage 2 under the Federal Aviation Regulations (FAR) Part 36. The Naples Municipal Airport has provided notice of the proposed restriction and an opportunity to comment to the public pursuant to the Airport Noise and Capacity Act of 1990 and 14 CFR Part 161.

In its notice published on August 27, 29, and September 1, 2001, in the Naples Daily News and the Fort Myers News Press, the Naples Municipal Airport proposes to prohibit all Stage 2 jet aircraft operations effective March 1, 2002.

Further information, copies of the complete text of the proposed restriction, and copies of the supporting analysis may be obtained at the offices of the City of Naples Airport Authority, 160 Aviation Drive North, Naples, Florida 34104–3568 during regular business hours.

Comments on the proposed restriction may be submitted to: City of Naples Airport Authority, ATTN: Lisa LeBlanc-Hutchings, 160 Aviation Drive North, Naples, Florida 34104–3568, Email: *administration@flynaples.com.* All comments must be received by October 31, 2001, to be considered.

Issued in Orlando, Florida on September 4, 2001.

John W. Reynolds, Jr.,

Acting Manager, Orlando Airports District Office.

[FR Doc. 01–23033 Filed 9–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–048]

RIN 2115–AE47

Drawbridge Operation Regulations; Harlem River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations which govern the Metro North (Park Avenue) Bridge, at mile 2.1, across the Harlem River at New York City, New York. This proposed rule would allow the bridge owner to require a four-hour advance notice for bridge openings, from 10 a.m. to 5 p.m., daily. It is expected that this proposed change to the regulations will meet the needs of navigation.

DATES: Comments must reach the Coast Guard on or before November 13, 2001.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard

District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except, Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Arca, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–01–048), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Metro North (Park Avenue) Bridge, at mile 2.1, across the Harlem River, has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water. The existing drawbridge operation regulations listed at 33 CFR 117.789(e) require the bridge to open on signal, from 10 a.m. to 5 p.m., except as provided in paragraph (b).

The owner of the bridge, Metro North, requested a change to the operating regulations to allow the bridge to open on signal, from 10 a.m. to 5 p.m., after a four-hour advance notice is given.

Metro North advised the Coast Guard that all the bridge openings during the last five years were for either vessel traffic employed in the construction of the Oak Point Link railroad Bridge located upstream or Metro North test openings at the bridge. The large construction barges, with equipment such as cranes on board, generally require a bridge opening.

The vessels that frequently use this waterway on a regular basis fit under the bridges without requiring bridge openings, with the exception of the Spuyten Duyvil railroad bridge, which has only 5 feet of vertical clearance at mean high water. All the upstream bridges, with the exception of the Spuyten Duyvil railroad bridge, presently require a four-hour advance notice for bridge openings, from 10 a.m. to 5 p.m., daily.

The existing drawbridge operation regulations are consistent with regard to the four-hour advance notice requirement, from 10 a.m. to 5 p.m., daily.

In addition, all the bridges, except Spuyten Duyvil, have similar or greater vertical clearances at mean high water (MHW) and at mean low water (MLW). The clearances for the bridges on the Harlem River are as follows.

	Bridge name	Mile	MHW & MLW
Metro North (Park Ave)	2.1	25	30
Madison Avenue	2.3	25	29
145 Street	2.8	25	30
Macombs Dam	3.2	27	32
207 Street	6.0	26	30
Broadway	6.8	24	29
Spuyten Duyvil	7.9	5	9

As a result of all the above information the Coast Guard believes that it is reasonable to allow the Metro North (Park Avenue) railroad bridge to open on signal, from 10 a.m. to 5 p.m., after a four-hour advance notice is given, except as provided in paragraph (b).

Discussion of Proposal

The Coast Guard proposes to revise the operating regulations at 33 CFR 117.789(e) to require that the draw of the Metro North (Park Avenue) Bridge, mile 2.1, shall open on signal, except as provided in paragraph (b) of this section, from 10 a.m. to 5 p.m., if at least a four-hour advance notice is given by calling the number posted at the bridge.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the bridge will continue to open for vessel traffic after the advance notice is given.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, Feb. 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridge will open on signal after the advance notice is given.

Small Entities

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

The Coast Guard certifies under section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities. This conclusion is based upon the fact that the bridge will open on signal after the advance notice is given.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

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

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this rule.

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.789 is amended by revising paragraph (e) to read as follows:

§ 117.789 Harlem River

* * * * *

(e) The draw of the Metro North (Park Avenue) Bridge, mile 2.1, shall open on signal, except as provided in paragraph (b) of this section, from 10 a.m. to 5 p.m., if at least a four-hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: August 30, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–22988 Filed 9–12–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 036–REC; FRL–7056–5]

Corrections to the California State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to delete various local rules from the California State Implementation Plan (SIP) that were incorporated into the SIP in error. These primarily include rules concerning local fees, enforcement authorities, New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). EPA has determined that the continued presence of these rules in the SIP is potentially confusing and thus harmful to affected sources, local agencies and to EPA. The intended effect of this proposal is to delete these rules and make the SIP consistent with the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments must arrive by October 15, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75

Hawthorne Street, San Francisco, CA 94105.

You may inspect copies of the rules to be deleted at our Region IX office during normal business hours. You may also see copies at the locations listed in **SUPPLEMENTARY INFORMATION** under ''Public Inspection.''

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1184. Email: rose.julie@EPA.gov

SUPPLEMENTARY INFORMATION:

Public Inspection

California Air Resources Board
Stationary Source Division
Rule Evaluation Section
1001 ''I'' Street
Sacramento, CA 95814

Amador County Air Pollution Control District
500 Argonaut Lane
Jackson, CA 95642

Antelope Valley Air Pollution Control District
43301 Division Street, Suite 206
Lancaster, CA 93539–4409

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Butte County Air Quality Management District
2525 Dominic Drive, Suite J
Chico, CA 95928–7184

Calaveras County Air Pollution Control District
891 Mountain Ranch Road
San Andreas, CA 95249–9709

Colusa County Air Pollution Control District
100 Sunrise Blvd. Suite F
Colusa, CA 95932–3246

El Dorado County Air Pollution Control District
2850 Fairlane Court, Building C
Placerville, CA 95667–4100

Feather River Air Quality Management District
938—14th Street
Marysville, CA 95901–4149

Glenn County Air Pollution Control District
720 North Colusa Street
Willows, CA 95988–0351

Great Basin Unified Air Pollution Control District
157 Short Street, Suite 6
Bishop, CA 93514

Imperial County Air Pollution Control District
150 South Ninth Street
El Centro, CA 92243–2801

Kern County (Southeast Desert) Air Pollution Control District
2700 M. Street, Suite 302
Bakersfield, CA 93301–2370

Lake County Air Quality Management District
883 Lakeport Blvd.
Lakeport, CA 95453–5405

Lassen County Air Pollution Control District
175 Russell Avenue
Susanville, CA 96130–4215

Mariposa County Air Pollution Control District
5110 Bullion Street
Mariposa, CA 95338

Mendocino County Air Quality Management District
306 E. Gobbi Street
Ukiah, CA 95482

Modoc County Air Pollution Control District
202 W. Fourth Street
Alturas, CA 96101

Mojave Desert Air Quality Management District
14306 Park Avenue
Victorville, CA 92392–2310

Monterey Bay Unified Air Pollution Control District
24580 Silver Cloud Ct.
Monterey, CA 93940–6536

North Coast Unified Air Quality Management District
2300 Myrtle Avenue
Eureka, CA 95501–3327

Northern Sierra Air Quality Management District
200 Litton Drive, Suite 320
Grass Valley, CA 95945–2509

Northern Sonoma County Air Pollution Control District
150 Matheson Street
Healdsburg, CA 95448–4908

Placer County Air Pollution Control District
11464 B Avenue
Auburn, CA 95603

San Diego County Air Pollution Control District
9150 Chesapeake Drive
San Diego, CA 92123–1096

San Joaquin Valley Unified Air Pollution Control District
1990 East Gettysburg
Fresno, CA 93726

San Luis Obispo County Air Pollution Control District
3433 Roberto Court
San Luis Obispo, CA 93401–7126

Santa Barbara County Air Pollution Control District
26 Castilian Drive, B–23
Goleta, CA 93117

Shasta County Air Quality Management District
1855 Placer Street, Suite 101
Redding, CA 96001–1759

Siskiyou County Air Pollution Control District
525 South Foothill Drive
Yreka, CA 96097–3036

South Coast Air Quality Management District
21865 E. Copley Drive
Diamond Bar, CA 91765

Tehama County Air Pollution Control District
1750 Walnut Street
Red Bluff, CA 96080

Tuolumne County Air Pollution Control District
22365 Airport
Columbia, CA 95310

Ventura County Air Pollution Control District
669 County Square Drive
Ventura, CA 93003

Yolo-Solano Air Quality Management District
1947 Galileo Court, Suite 103
Davis, CA 95616

Throughout this document wherever ''we,'' ''us,'' or ''our'' are used, we mean EPA.

Table of Contents

I. Why is EPA proposing to correct the SIP?
II. What rules are proposed for deletion?
III. Proposed action, public comment and final action
IV. Administrative Requirements

I. Why Is EPA Proposing To Correct the SIP?

The Clean Air Act was first enacted in 1970. In the 1970s and early 1980s, thousands of state and local agency regulations were submitted to EPA for incorporation into the SIP in order to fulfill the new federal requirements. In many cases, states submitted entire regulatory air pollution programs, including many elements not required by the Act. Due to time and resource constraints, EPA's review of these submittals focussed primarily on the new substantive requirements and we approved many other elements into the SIP with minimal review.

We now recognize that many of these elements were not appropriate for approval into the SIP. In general, these elements are appropriate for state and local agencies to adopt and implement, but it is not necessary or appropriate to make them federally enforceable by incorporating them into the applicable SIP. These include:

A. Various local fee provisions that are not economic incentive programs and are not designed to replace or relax a SIP emission limit. While it is appropriate for local agencies to implement fee provisions, for example, to recover costs for issuing permits, it is generally not appropriate to make local fee collection federally enforceable.

B. Various provisions describing local agency investigative or enforcement authority such as some rules titled enforcement, authority to inspect, authority to arrest, violation notices, and orders for abatement. States may need to adopt such rules to demonstrate adequate enforcement authority under section 110(a)(2) of the Act, but they should not be approved into the applicable SIP to avoid potential conflict with EPA's independent authorities provided in sections 113, 114 and elsewhere.

C. Local adoption of federal NSPS requirements either by reference or by adopting text identical or modified from the requirements found in 40 CFR part 60. Since EPA has independent authority to implement 40 CFR part 60, it is not appropriate to make parallel local authorities federally enforceable by approving them into the applicable SIP.

D. Local adoption of NESHAP requirements found in 40 CFR part 61 as similarly discussed regarding NSPS.

II. What Rules Are Proposed for Deletion?

EPA has determined that the California rules listed in the tables below are inappropriate for inclusion in the SIP, but were previously approved into the SIP in error. Dates that these rules were submitted by the State and approved by EPA are provided. We are proposing deletion of these rules and any earlier versions of these rules from the individual air pollution control district portions of the California SIP under section section 110(k)(6) as inconsistent with the requirements of CAA section 110 and part D.

Rule	Title	Submittal date	Approval date
Amador County Air Pollution Control District			
103	Enforcement	10/15/79	05/18/81
105	Civil Action	04/21/76	06/14/78
318	Enforcement Responsibility	10/16/85	04/17/87
319	Penalty	10/16/85	04/17/87
402	Authority to Inspect	10/15/79	05/18/81
509	Authority to Inspect	10/16/85	04/17/87
Reg. 6	Fees (Rules 601 to 604)	10/15/79	05/18/81
Antelope Valley Air Pollution Control District			
302	Fees for Publications	02/03/83	11/18/83
304	Analysis Fees	02/03/83	10/19/84
Los Angeles County			
42	Hearing Board Fees	06/06/77	09/08/78
43	Analysis Fees	06/30/72	09/22/72
44	Technical Reports, Charges for	06/30/72	09/22/72
45	Permit Fees—Open Burning	07/25/73	09/08/78
105	Authority to Arrest	06/06/77	09/08/78
120	Fees	06/30/72	09/22/72
Southern California APCD			
105	Authority to Arrest	04/21/76	06/14/78
Bay Area Air Quality Management District			
Reg. 3	Fees	08/30/83	05/03/84
	Fees—Schedules A through Schedule I	08/30/83	05/03/84
Reg. 7	New Source Performance Standards (01–13)	01/10/75	05/11/77
Butte County Air Quality Management District			
04–03	Permit Fees	04/11/83	11/18/83
04–11	Appeal Fee	04/11/83	11/18/83
05–03	Application Fee	04/11/83	11/18/83
701	Violation of Rules	02/10/86	02/03/87
702	Violation of Orchard Heater or Open Burning Regulations	02/10/86	02/03/87
703	Citations	02/10/86	02/03/87
902	Empower to Enter Upon Private Property	02/10/86	02/03/87
Calaveras County Air Pollution Control District			
109	Penalty	06/30/72	09/22/72
216	Enforcement	10/13/77	11/07/78
324	Penalty	10/13/77	11/07/78
402	Authority to Inspect	10/13/77	11/07/78
602	Permit Fee Schedules (1 to 6)	10/13/77	11/07/78
603	Analysis Fees	10/13/77	11/07/78
604	Technical Reports	10/13/77	11/07/78
Colusa County Air Pollution Control District			
1.4	Enforcement	06/30/72	09/22/72

Rule	Title	Submittal date	Approval date
2.13	Appeal Fee	06/30/72	09/22/72
6.11	Enforcement	06/30/72	09/22/72
6.12	Penalty	06/30/72	09/22/72
El Dorado County Air Pollution Control District			
El Dorado County			
216	Enforcement	11/04/77	11/06/78
323	Enforcement Responsibility	04/10/75	06/14/78
324	Penalty	11/04/77	11/06/78
402	Authority to Inspect	11/04/77	11/06/78
601	Analysis Fees	04/10/75	06/14/78
602	Technical Reports—Charges for	04/10/75	06/14/78
Lake Tahoe Air Basin			
Reg. 6	Fees (Rules 601 to 613)	08/15/80	05/27/82
Reg. 8	Enforcement (Rules 801 to 804)	05/23/79	05/18/81
Mountain Counties Air Basin			
226	Enforcement	10/27/83	05/03/84
318	Enforcement Responsibility	10/23/81	05/27/82
319	Penalty	10/23/81	05/27/82
509	Authority to Inspect	04/17/80	05/27/82
Reg. 6	Fees (Rules 601 to 608)	08/15/80	05/27/82
Reg. 6	Fees (Rules 609 to 612)	04/11/83	11/18/83
Feather River Air Quality Management District—Sutter County			
1.4	Enforcement	02/25/80	01/26/82
2.20	Payment of Order Charging Costs	06/30/72	09/22/72
Reg. 8	Penalties and Abatement (Rules 8.0 to 8.2)	01/28/81	04/12/82
Reg. 9	Enforcement Procedure (Rules 9.0 to 9.4)	01/28/81	04/12/82
Yuba County			
Reg. 7	Fees (Rules 7.0 to 7.1)	10/15/79	01/26/82
8.0	Penalties	03/30/81	04/12/82
8.1	Arrest, Notice to Appear	10/15/79	01/26/82
8.2	Orders for Abatement	03/30/81	04/12/82
Reg. 9	Enforcement Procedures (Rules 9.0 to 9.4)	03/30/81	04/12/82
Glenn County Air Pollution Control District			
3	Enforcement	11/03/80	01/26/82
3.1	Right of Entry	01/10/75	08/22/77
151	Hearing Transcript Cost	06/30/72	09/22/72
152	Analysis Fees	11/04/77	09/14/78
153	Technical Reports and Regulations: Charges for	06/30/72	09/22/72
154	Authorization to Construct Fees	11/04/77	09/14/78
155	Permit to Operate Fee Schedules (1 to 7)	01/10/75	05/11/77
Great Basin Unified Air Pollution Control District			
105	Arrests and Notices to Appear	04/21/76	06/06/77
300	Permit Fees	05/28/81	04/13/82
301	Permit Fee Schedules (1 to 7)	10/23/81	04/13/82
302	Analysis Fees	04/21/76	06/06/77
303	Technical Reports—Charges For	04/21/76	06/06/77
Imperial County Air Pollution Control District			
104	Violations	11/04/77	08/11/78
105	Enforcement	06/09/87	02/03/89
106	Abatement	11/04/77	08/11/78
108	Inspections	06/09/87	02/03/89
Reg. 3	Fees (Rules 301, 302, 305, 306, and 307)	10/23/81	05/27/82
Reg. 3	Fees (Rule 303)	11/04/77	08/11/78
Reg. 3	Fees (Rule 304)	10/15/79	01/27/81
706	Penalty Clause	10/15/79	01/27/81

Rule	Title	Submittal date	Approval date
Kern County Air Pollution Control District—Southeast Desert			
104	Enforcement	11/10/76	03/22/78
107	Inspections	06/30/72	09/22/72
109	Penalty	06/30/72	9/22/72
110	Arrests and Notices to Appear	12/15/80	07/06/82
Reg. 3	Fees (Rules 301 and 305)	07/30/81	07/06/82
Reg. 3	Fees (Rules 301.1 and 302, Schedule 9)	07/19/83	02/01/84
Reg. 3	Fees Rule 302 (Schedules 1 to 8)	07/30/81	07/06/82
Reg. 3	Fees (Rules 303 and 304)	06/30/72	09/22/72
422	New Source Performance Standards	07/22/75	08/22/77
423	Emission Standards for Hazardous Air Pollutants	07/22/75	08/22/77
Lake County Air Quality Management District			
531	Credentials for Entry	02/10/77	08/04/78
660	Renewal Fees	05/23/79	01/27/81
660.1	Permit Fee Penalty	08/06/82	11/10/82
660.2	Cancellation or Denial	08/06/82	11/10/82
660.3	Miscellaneous Charges	08/06/82	11/10/82
Ch. 7	Penalties (Rules 900 and 902)	04/11/83	11/18/83
Ch. 7	Penalties (Rule 901)	02/10/77	08/04/78
1500	Enforcement	02/10/77	08/04/78
Lassen County Air Pollution Control District			
1.4	Enforcement	07/25/73	02/10/77
Reg. 3	Fees (Rules 3.2, 3.3 (Schedules 1 to 6), 3.4, and 3.5)	07/25/73	02/10/77
Mariposa County Air Pollution Control District			
17	Penalty	06/30/72	09/22/72
216	Enforcement	06/06/77	08/16/78
402	Authority to Inspect	06/06/77	08/16/78
Mendocino County Air Quality Management District			
340	Technical Report Charges	11/10/76	11/07/78
500	Enforcement	04/19/84	12/05/84
520	Civil Penalties	04/19/84	12/05/84
2–502.1	Penalties	04/19/84	12/05/84
2–502.2	Penalties	12/03/84	05/09/85
Part X	Paragraph 3, Permit Fees	02/21/72	05/31/72
Modoc County Air Pollution Control District			
1.4	Enforcement	06/30/72	09/22/72
Mojave Desert Air Quality Management District			
Riverside County			
105	Authority to Arrest	11/04/77	12/21/78
Reg. 3	Fees, Rules 301 and 42	06/06/77	09/08/78
Reg. 3	Fees, Rules 43 and 44	06/30/72	09/22/72
San Bernardino County			
105	Authority to Arrest	03/26/90	11/27/90
Reg. 3	Fees, Rules 40, 42, 43, and 44	02/21/72	05/31/72
Southern California APCD			
105	Authority to Arrest	04/21/76	06/14/78
Monterey Bay Unified Air Pollution Control District			
104	Arrests and Notices to Appear	02/06/85	07/13/87
Reg. 3	Fees (Rules 302 and 303)	10/23/74	10/27/77
Reg. 3	Fees (Rule 301, Schedules I to V)	02/03/83	08/09/85
North Coast Unified Air Quality Management District			
500	Enforcement	03/14/84	12/05/84
520	Civil Penalties	03/14/84	12/05/84

Rule	Title	Submittal date	Approval date
2–502	Penalties	07/10/84	01/29/85
Northern Sierra Air Quality Management District			
223	Enforcement	10/28/96	09/16/97
Nevada County			
105	Arrest Without Warrant; Citation Procedure	04/10/75	06/14/78
402	Authority to Inspect	06/06/77	09/14/78
Reg. 6	Fees (Rules 601 and 602)	04/10/75	06/14/78
41	Analysis Fees	02/21/72	05/31/72
Plumas County			
3	Penalties for Violations	06/30/72	09/22/72
4	Civil Penalties	06/30/72	09/22/72
40	Permit Fees	06/30/72	09/22/72
509	Authority to Inspect	06/22/81	06/18/82
Sierra County			
509	Authority to Inspect	06/22/81	06/18/82
46	General Enforcement	02/21/72	05/31/72
50	Field Inspection	02/21/81	05/31/72
618	Hearing Board Fees	05/23/79	01/25/82
Northern Sonoma County Air Pollution Control District			
42	Analysis Fees	06/30/72	09/22/72
100	Penalties for Violations	06/30/72	09/22/72
500	Enforcement	10/16/85	04/17/87
520	Civil Penalties	10/16/85	04/17/87
Placer County Air Pollution Control District			
105	Civil Action	01/10/75	06/14/78
402	Authority to Inspect	10/13/77	11/15/78
40	Hearing Board Fees	02/21/72	05/31/72
42	Technical Reports, Charges for	02/21/72	05/31/72
Lake Tahoe Air Basin			
Reg. 8	Enforcement (Rules 801 to 804)	10/13/77	11/15/78
Mountain Counties Air Basin			
801	Enforcement	10/13/77	11/15/78
802	Authority to Arrest	10/13/77	11/15/78
803	Penalties, paragraph A	2/10/86	2/3/87
803	Penalties, paragraphs B & C	10/13/77	11/15/78
804	Order for Abatement	10/13/77	11/15/78
Sacramento Valley Air Basin			
603	Analysis Fees	10/13/77	11/15/78
604	Renewal Fee	10/13/77	11/15/78
605	Exemptions to Rule 604	10/13/77	11/15/78
	Fee Schedules (1 to 5)	10/13/77	11/15/78
Reg. 8	Enforcement (Rules 801 to 804)	10/13/77	11/15/78
San Diego County Air Pollution Control District			
5	Authority to Arrest	4/21/76	5/11/77
San Joaquin Valley Unified Air Pollution Control District			
Fresno County			
104	Enforcement	6/30/72	9/22/72
105	Order of Abatement	6/30/72	9/22/72
107	Inspections	6/30/72	9/22/72
109	Penalty	6/30/72	9/22/72
111	Arrests and Notice to Appear	6/4/86	4/10/89
301	Permit Fee	4/11/83	11/18/83

Rule	Title	Submittal date	Approval date
302	Permit Fee Schedules	10/15/79	12/9/81
303	Analysis Fee Schedules	6/30/72	9/22/72
304	Technical Reports-Charges for	6/30/72	9/22/72
422	New Source Performance Standards	2/10/76	8/22/77
423	Emission Standards for Hazardous Air Pollutants	2/10/76	8/22/77
Kern County			
104	Enforcement	11/10/76	3/22/78
107	Inspections	6/30/72	9/22/72
109	Penalty	6/30/72	9/22/72
110	Arrests and Notice to Appear	12/15/80	7/6/82
301	Permit Fee	7/30/81	7/6/82
301.1	Banking Certificate Fees	7/19/83	2/1/84
302	Permit Fee Schedules	7/19/83	2/1/84
303	Analysis Fee Schedules	6/30/72	9/22/72
304	Technical Reports-Charges for	6/30/72	9/22/72
422	New Source Performance Standards	7/22/75	8/22/77
423	Emission Standards for Hazardous Air Pollutants	7/22/75	8/22/77
Kings County			
104	Enforcement	11/4/77	8/4/78
107	Inspections	7/25/73	8/22/77
109	Penalty	6/30/72	9/22/72
110	Arrests and Notice to Appear	11/4/77	8/4/78
301	Permit Fee	10/15/79	12/9/81
Madera County			
105	Enforcement	4/11/83	11/18/83
108	Inspections	4/11/83	11/18/83
111	Penalty	4/11/83	11/18/83
112	Arrests and Notice to Appear	2/7/89	4/16/91
301	Permit Fees	4/11/83	11/18/83
302	Permit Fee Schedules	4/11/83	11/18/83
303	Emission Analysis Fees	4/11/83	11/18/83
304	Report Fees	4/11/83	11/18/83
Merced County			
104	Enforcement	7/19/83	2/1/84
107	Inspections	6/30/72	9/22/72
112	Penalty	10/19/84	1/29/85
113	Arrests and Notices to Appear	7/19/83	2/1/84
301	Permit Fees (Paragraphs c to g, i, and j)	6/30/72	9/22/72
301	Permit Fees (Paragraphs: a, b, and h)	6/30/72	9/22/72
302	Permit Fee Schedules	8/2/76	6/14/78
303	Analysis Fees	6/30/72	9/22/72
304	Technical Reports—Charges for	6/30/72	9/22/72
San Joaquin County			
104	Enforcement	11/10/76	10/4/77
105	Order of Abatement	11/10/76	10/4/77
107	Inspections	6/30/72	9/22/72
109	Penalty	6/30/72	9/22/72
112	Arrests and Notice to Appear	11/10/76	10/4/77
422	New Source Performance Standards	02/10/76	08/22/77
423	Emission Standards for Hazardous Air Pollutants	02/10/76	08/22/77
Stanislaus County			
104	Enforcement	08/02/76	08/22/77
105	Order of Abatement	08/02/76	08/22/77
107	Inspections	06/30/72	09/22/72
109	Penalty	08/30/83	05/03/84
112	Arrests and Notice to Appear	08/02/76	08/22/77
422	New Source Performance Standards	08/02/76	08/22/77
Emission Standards for Hazardous Air Pollutants.	08/02/76	08/22/77	

Rule	Title	Submittal date	Approval date
Tulare County			
104	Enforcement	05/20/82	11/10/82
107	Inspections	06/30/72	09/22/72
109	Penalty	06/30/72	09/22/72
110	Arrests and Notice to Appear	06/09/87	02/03/89
San Luis Obispo County Air Pollution Control District			
110	Enforcement	11/10/76	08/04/78
111	Arrests and Notice to Appear	11/10/76	08/04/78
Santa Barbara County Air Pollution Control District			
210	Fees (Paragraphs A to D–5 and G to L)	12/15/80	06/18/82
210	Fees (Paragraphs D–6 to D–8 and E to F)	11/08/82	06/01/83
402	Enforcement	05/23/79	05/18/81
Shasta County Air Quality Management District			
2–11	Fees	05/20/82	11/10/82
3–7	Enforcement	07/19/74	08/22/77
Siskiyou County Air Pollution Control District			
1.4	Enforcement	03/26/90	11/04/96
3.1	Hearing Board Fees	02/21/72	05/31/72
3.2	Permit Fees	02/21/72	05/31/72
3.3	Schedule of Fees	02/21/72	05/31/72
South Coast Air Quality Management District			
302	Fees for Publication	02/03/83	11/18/83
304	Analysis Fees	02/03/83	10/19/84
Los Angeles County			
45	Permit Fees—Open Burning	07/25/73	09/08/78
120	Fees	06/30/72	09/22/72
Orange County			
120	Fees	02/21/72	05/31/72
Southern California APCD			
105	Authority to Arrest	04/21/76	06/14/78
Tehama County Air Pollution Control District			
1.3	Enforcement	12/15/80	04/12/82
2.9	Variance and Permit Fees	12/15/80	04/12/82
Tuolumne County Air Pollution Control District			
216	Enforcement	02/10/77	12/06/79
323	Enforcement Responsibility	02/10/77	12/06/79
324	Penalty	02/10/77	12/06/79
509	Authority to Inspect	10/23/81	05/27/82
Ventura County Air Pollution Control District			
9	Arrest Authority	05/23/79	06/18/82
72–72.8	New Source Performance Standards (various sources)	11/03/75	08/15/77
72.9–72.10	New Source Performance Standards (various sources)	11/10/76	08/15/77
73–73.4	National Emission Standards for Hazardous Air Pollutants (various sources).	11/10/76	08/15/77
Yolo-Solano Air Quality Management District			
1.4	Enforcement	06/22/78	01/29/79
1.7	Arrest, Notice to Appear	02/21/72	05/31/72
2.18	Payment of Order Charging Costs	02/21/72	05/31/72

III. Proposed action, public comment and final action

EPA has reviewed the rules listed in the tables above and determined that they were previously approved into the applicable California SIP in error. Deletion of these rules will not relax the applicable SIP and is consistent with the Act. Therefore, EPA is proposing to delete these rules under section 110(k)(6) of the Act, which provides EPA authority to remove these rules without additional State submission. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final action that will delete these rules from the federally enforceable SIP.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In this proposed rule, EPA is not developing or adopting a technical standard. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

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

Dated: August 31, 2001.

Sally Seymour,

Acting Regional Administrator, Region IX.

[FR Doc. 01–22999 Filed 9–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63

[PA001–1000; FRL–7056–1]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; State of Pennsylvania; Department of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Pennsylvania Department of Environmental Protection's (PADEP's) request for delegation of authority to implement and enforce its hazardous air pollutant regulations for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning and secondary lead smelting which have been adopted by reference from the Federal requirements set forth in the Code of Federal Regulations. This proposed approval will automatically delegate future amendments to these regulations. In addition, EPA is proposing to approve of PADEP's mechanism for receiving delegation of future hazardous air pollutant regulations which it adopts unchanged from the Federal requirements. This mechanism entails submission of a delegation request letter to EPA following EPA notification of a new Federal requirement. This action pertains only to sources which are not required to obtain a Clean Air Act operating permit. In the Final Rules section of this **Federal Register**, EPA is approving the State's request for delegation of authority as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before October 15, 2001.

ADDRESSES: Written comments on this action should be sent concurrently to: Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, and James M. Salvaggio, Director, Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Dianne J. McNally, 215–814–3297, at the EPA Region III address above, or by e-mail at *mcnally.dianne@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information on this action, pertaining to approval of PADEP's delegation of authority for the hazardous air pollutant emission standards for perchloroethylene dry cleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilizers, halogenated solvent cleaning and secondary lead smelters (Clean Air Act section 112), please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 5, 2001.

Judith M. Katz,

Director, Air Protection Division, Region III.

[FR Doc. 01–22991 Filed 9–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7054–4]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 37

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule proposes to add 17 new sites to the NPL; 16 sites to the General Superfund Section of the NPL and one site to the Federal Facilities Section. (Please note that one of the sites is being reproposed to the NPL.)

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 13, 2001.

ADDRESSES: *By Postal Mail:* Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5201G); 1200 Pennsylvania Avenue NW., Washington, DC 20460.

By Express Mail or Courier: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to *superfund.docket@epa.gov.* E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the SUPPLEMENTARY INFORMATION portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. What are CERCLA and SARA?
B. What is the NCP?
C. What is the National Priorities List (NPL)?
D. How are Sites Listed on the NPL?
E. What Happens to Sites on the NPL?
F. How Are Site Boundaries Defined?
G. How Are Sites Removed From the NPL?
H. Can Portions of Sites Be Deleted from the NPL as They Are Cleaned Up?
I. What is the Construction Completion List (CCL)?
II. Public Review/Public Comment
A. Can I Review the Documents Relevant to This Proposed Rule?
B. How Do I Access the Documents?
C. What Documents Are Available for Public Review at the Headquarters Docket?
D. What Documents Are Available for Public Review at the Regional Dockets?
E. How Do I Submit My Comments?
F. What Happens to My Comments?
G. What Should I Consider When Preparing My Comments?
H. Can I Submit Comments After the Public Comment Period Is Over?
I. Can I View Public Comments Submitted by Others?
J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?
III. Contents of This Proposed Rule
A. Proposed Additions to the NPL
B. Status of NPL
IV. Executive Order 12866
A. What is Executive Order 12866?
B. Is This Proposed Rule Subject to Executive Order 12866 Review?
V. Unfunded Mandates
A. What is the Unfunded Mandates Reform Act (UMRA)?
B. Does UMRA Apply to This Proposed Rule?
VI. Effect on Small Businesses
A. What is the Regulatory Flexibility Act?
B. How Has EPA Complied with the Regulatory Flexibility Act (RFA)?
VII. National Technology Transfer and Advancement Act
A. What is the National Technology Transfer and Advancement Act?
B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?
VIII. Executive Order 12898
A. What is Executive Order 12898?
B. Does Executive Order 12898 Apply to this Proposed Rule?
IX. Executive Order 13045
A. What is Executive Order 13045?
B. Does Executive Order 13045 Apply to this Proposed Rule?
X. Paperwork Reduction Act
A. What is the Paperwork Reduction Act?
B. Does the Paperwork Reduction Act Apply to this Proposed Rule?
XI. Executive Orders on Federalism
What Are The Executive Orders on Federalism and Are They Applicable to This Proposed Rule?
XII. Executive Order 13084
What is Executive Order 13084 and Is It Applicable to this Proposed Rule?
XIII. Executive Order 13175
A. What is Executive Order 13175?
B. Does Executive Order 13175 Apply to This Proposed Rule?
XIV. Executive Order 13211
A. What is Executive Order 13211?
B. Is this Rule Subject to Executive Order 13211?

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on June 14, 2001 (66 FR 32235).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of August 23, 2001, the Agency has deleted 239 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of August 23, 2001, EPA has deleted 24 portions of 23 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL.

As of August 23, 2001, there are a total of 773 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the Regional offices.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Ellen Culhane, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1225.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Lauren Brantley, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SMR–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

Robert Phillips, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–110, Seattle, WA 98101; 206/553–6699.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed sites; a Documentation Record for the sites describing the information used to compute the score; information for any sites affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

With today's proposed rule, EPA is proposing to add 17 new sites to the NPL; 16 sites to the General Superfund Section of the NPL and one site to the Federal Facilities Section. (Please note that the Sauget 1 site in Illinois is being reproposed to the NPL.) The sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in Table 1 and Table 2 which follow this preamble.

B. Status of NPL

A final rule published elsewhere in today's **Federal Register** finalizes 11 sites to the NPL; resulting in an NPL of 1,240 final sites; 1,080 in the General Superfund Section and 160 in the Federal Facilities Section. With this proposal of 17 new sites, there are now 72 sites proposed and awaiting final agency action, 65 in the General Superfund Section and 7 in the Federal Facilities Section. (Please note that one of the 17 sites is being reproposed to the NPL.) Final and proposed sites now total 1,312. (These numbers reflect the status of sites as of August 23, 2001. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. How Has EPA Complied With the Regulatory Flexibility Act (RFA)?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

VII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

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

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Proposed Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

XII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Proposed Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. The addition of sites to the NPL will not impose any substantial direct compliance costs on Tribes. While Tribes may incur costs from participating in the investigations and cleanup decisions, those costs are not compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

XIII. Executive Order 13175

A. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

B. Does Executive Order 13175 Apply to This Proposed Rule?

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

XIV. Executive Order 13211

A. What Is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' Section 4(b) of

Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

B. Is This Rule Subject to Executive Order 13211?

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866 (See discussion of Executive Order 12866 above.)

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 37, GENERAL SUPERFUND SECTION

State	Site name	City/County
IA	Railroad Avenue Groundwater Contamination	Des Moines.
ID	Stibnite/Yellow Pine Mining Area	Yellow Mine.
IL	Sauget Area 1	Sauget and Cahokia.
IL	Sauget Area 2	Sauget.
MA	Hatheway and Patterson Company	Mansfield.
ME	Callahan Mine	Brooksville.
MO	Oak Grove Village Well	Oak Grove Village.
NC	Reasor Chemical Company	Castle Hayne.
NJ	Atlantic Resources Corporation	Sayreville.
NJ	Woodbrook Road Dump	South Plainfield.
NM	McGaffey and Main Groundwater Plume	Roswell.
NY	Cayuga County Ground Water Contamination	Cayuga County.
NY	Crown Cleaners of Watertown, Inc	Carthage.
NY	Ellenville Scrap Iron and Metal	Ellenville.
PA	Franklin Slag Pile (MDC)	Philadelphia.
TX	Brine Service Company	Corpus Christi.

Number of Sites Proposed to General Superfund Section: 16.

TABLE 2.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 37, FEDERAL FACILITIES SECTION

State	Site name	City/County
MD	Curtis Bay Coast Guard Yard	Anne Arundel County.

Number of Sites Proposed to Federal Facilities Section: 1.

List of Subjects in 40 CFR Part 300

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

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

Dated: September 5, 2001.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 01–22742 Filed 9–12–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket Nos. 00–258 and 95–18 and IB Docket No. 99–81; FCC 01–224]

Introduction of New Advanced Mobile and Fixed Terrestrial Wireless Services; Use of Frequencies Below 3 GHz

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission seeks comment on additional options and issues in its continuing study of the possible use of frequency bands below 3 GHz to support the introduction of new advanced mobile and fixed terrestrial wireless services, including third generation and future generations of wireless systems.

DATES: Comments are due on or before October 11, 2001, and reply comments are due on or before October 25, 2001.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Spencer, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Further Notice of Proposed Rulemaking (FNPRM) portion of the Commission's Memorandum Opinion and Order (MO&O) and FNPRM in ET Docket Nos. 00–258 and 95–18, and IB Docket No. 99–81, FCC 01–224, adopted August 9, 2001, and released August 20, 2001. The complete text of this FNPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554.

Synopsis of the FNPRM

1. This FNPRM continues our exploration of the possible use of frequency bands below 3 GHz to support the introduction of new advanced mobile and fixed terrestrial wireless services (advanced wireless services), including third generation (3G) and future generations of wireless systems. The Commission initiated this proceeding by Notice of Proposed Rulemaking in ET No. 00–258, which can be found at 66 FR 18740, April 11, 2001. The FNPRM also resolves a petition for rulemaking filed by the Cellular Telecommunications & Internet Association (CTIA). The MO&O portion of this decision is published elsewhere in this edition of the **Federal Register**.

2. The Commission, in the FNPRM, explores the possibility of introducing new advanced wireless services in frequency bands not identified in the NPRM, including bands currently designated for the Mobile Satellite Service (MSS), the Unlicensed Personal Communications Service (UPCS), the Amateur Radio Service (ARS), and the Multipoint Distribution Service (MDS). Specifically, the Commission seeks comment on reallocating spectrum in the 1910–1930 MHz, 1990–2025 MHz, 2150–2160 MHz, 2165–2200 MHz, and 2390–2400 MHz bands for new advanced wireless services.

3. The purpose of this FNPRM is to supplement the record by providing new allocation options that were not addressed in the NPRM, and by seeking comment on the benefits and costs of each new allocation option. These spectrum options complement rather than substitute for options identified previously in the NPRM. The FNPRM solicits comment on the potential for commercial use of these additional spectrum bands directly for new advanced wireless services, both paired and unpaired. The FNPRM also invites comment on the use of these or other bands for the relocation of incumbent licensees or operators who could be displaced by the final allocation established in this proceeding. The FNPRM seeks comment on the advantages and disadvantages of these options, including the potential for new advanced wireless services in these bands. Further, the FNPRM seeks comment on the potential effect of the allocation proposals described in the full text of the FNPRM on existing and prospective users of these bands and the services they provide (*e.g.,* MSS, UPCS, ARS, and MDS). Finally, the FNPRM seeks comment on the costs and benefits to the United States of regional or global spectrum harmonization for advanced wireless services.

4. In its petition for rulemaking, CTIA asked that the 2 GHz MSS bands be reallocated for other uses and that the Commission withhold grant of 2 MHz licenses while it considers CTIA's petition. The FNPRM grants CTIA's petition in part, but denies the petition insofar as it requests reallocation of the entire 2 GHz MSS band and a delay in authorizing 2 GHz MSS systems.

Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this FNPRM. The Commission requests written public comment on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, the Commission asks a number of questions in the IRFA regarding the prevalence of small businesses in the affected industries. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments filed on the FNPRM, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Analysis

6. The Further Notice of Proposed Rulemaking does not contain a proposed information collection.

Ex Parte Presentations

7. For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the Commission's Rules. (*See generally* 47 CFR 1.1202, 1.1203, 1.1206(a).)

Comment Dates

8. Pursuant to applicable procedures set forth in 47 CFR 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before October 11, 2001, and reply comments on or before October 25, 2001. The Commission asks that comments to the IRFA be submitted to all three dockets listed in the caption of the FNPRM, ET Docket No. 00–258, ET Docket No. 95–18, and IB Docket No. 99–81.

9. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters who file by paper must submit two additional copies for each additional docket or rulemaking number. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street, SW, Washington, DC 20554, with a copy to John Spencer, Wireless Telecommunications Bureau, 445 Twelfth Street, SW, Washington, DC 20554. Parties are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

10. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

11. Comments and reply comments will be available for public inspection during regular business hours at the FCC Reference Center, Room CY–A257, at the Federal Communications Commission, 445 Twelfth Street, SW, Washington, DC 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 202–863–2893.

Ordering Clauses

12. Pursuant to the authority contained in sections 1, 4(j), 7(a), 301,

303(c), 303(f), 303(g), 303(r), 308, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j), this Further Notice of Proposed Rulemaking is adopted.

13. The Petition for Rulemaking filed by the Cellular Telecommunications & Internet Association is granted to the extent indicated in the Further Notice of Proposed Rule Making, and is otherwise denied.

14. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

15. This is a summary of the Initial Regulatory Flexibility Analysis for the FNPRM. The full text of the Initial Regulatory Flexibility Analysis may be found in Appendix A of the full FNPRM.

16. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this FNPRM, ET Docket No. 00–258, ET Docket No. 95–18, and IB Docket No. 99–81. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission further asks that comments to the IRFA be submitted to all three dockets listed in the caption of the FNPRM, ET Docket No. 00–258, ET Docket No. 95–18, and IB Docket No. 99–81.

A. Need for, and Objectives of, the Proposed Rules

17. The objective of the proposed actions is to consider reallocating spectrum that could be used to provide a wide range of voice, data, and broadband services over a variety of mobile and fixed networks, thus offering all entities, including small entities, greater opportunity to participate in the telecommunications industry and greater flexibility.

B. Legal Basis for Proposed Rules

18. The proposed action is authorized under sections 1, 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j) of the Communications Act of 1934, 47 U.S.C. 151, 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

19. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."

20. The term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, as of 1992 there were approximately 4.44 million small business firms, according to SBA reporting data.

21. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations.

22. The definition of "small governmental jurisdiction" is one with populations of fewer than 50,000. As of 1992, there were approximately 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our proposed rules.

23. *Geostationary, Non-Geostationary Orbit, Fixed Satellite, or Mobile Satellite Service Operators.* The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit, fixed-satellite or mobile-satellite service operators. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified, which provides that a small entity is one with $11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under this category. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities. Small businesses may not have the financial ability to become geostationary or non-geostationary, fixed-satellite or mobile-satellite service system operators because of the high implementation costs associated with satellite systems and services. At this time, at least one of the 2 GHz MSS applicants may be considered a small business. The Commission expects, however, that by the time of implementation it will no longer be considered a small business due to the capital requirements for launching and operating its proposed system. Because there are limited spectrum and orbital resources available for assignment, the Commission estimates that no more than nine entities will be approved by the Commission as operators providing these services.

24. *Multipoint Distribution Service (MDS).* In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million. The SBA has approved this definition of a small entity in the context of MDS auctions. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities. Of the 67 auction winners, 61 meet the definition of a small business.

25. MDS is also heavily encumbered with licensees of stations authorized prior to the MDS auction. SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes MDS systems, and thus applies to incumbent MDS licensees and wireless cable operators which may not have participated or been successful in the MDS auction. For purposes of this analysis, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, all of which could be affected by the Commission's proposed action.

26. *Amateur Radio Service (ARS).* Incumbent licensees in the ARS could be affected by actions taken in this proceeding. However, because the ARS is comprised of individuals, no small entities will be affected.

27. *Unlicensed Personal Communications Service (UPCS).* As its

name indicates, UPCS is not a licensed service. There is no accurate source for the number of operators in the UPCS. Manufacturers could be affected if UPCS frequencies are transferred for other uses, however, because need for their product could be minimized or eliminated, depending on the final action taken. This hardship could be offset if UPCS operators are moved to other frequencies or if manufacturers can sell equipment to new services occupying the UPCS frequencies. The Commission has not developed a definition of small entities applicable to UPCS equipment manufacturers. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified, which provides that a small entity is one with $11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under this category. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities. There are currently 15 manufacturers that have 45 equipment authorizations for devices that operate in the 1910–1930 MHz band. No equipment authorizations have been issued for devices operating in the 2390–2400 MHz band.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

28. This FNPRM deals only with the possible reallocation of frequency bands below 3 GHz to support the introduction of new wireless services, and does not propose assignment or service rules. Thus, the item proposes no new reporting, recordkeeping, or other compliance requirements. Once it has been decided whether to reallocate this spectrum, the Commission will consider adoption of implementing rules, some of which might entail compliance requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered and Rejected

29. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; (4) an exemption from coverage of the rule, or any part thereof, for small entities.

30. Providing spectrum to support the introduction of new advanced mobile and fixed terrestrial wireless services is critical to the continuation of technological advancement. First and foremost, the Commission believes that our proposal to explore the possible use of several frequency bands that could offer a wide range of voice, data, and broadband services over a variety of mobile and fixed networks may provide substantial new opportunities for small entities.

31. However, depending on the final action taken in this proceeding, small incumbent entities could be affected in a negative way as well, because some entities must be displaced to clear spectrum for new uses. The Commission endeavored to avoid this effect by identifying unencumbered spectrum, but spectrum in the suitable frequency range is heavily used already and sufficient unencumbered spectrum simply does not exist. The Commission has therefore sought to minimize an adverse impact by proposing to reallocate frequency bands for those incumbents, including small entities, which might be accommodated in other spectrum and could be relocated more easily. The Commission is also considering compensation of displaced incumbents, including any small entity, which is displaced. At this nascent stage of the proceeding, the Commission is soliciting comment on a variety of issues relevant to these possibilities.

32. Paragraph 40 of the full text of the FNPRM further suggests the alternative of grandfathering incumbent licensees who qualify as small entities, until they are ready to move to new frequencies, thus easing their transition to new spectrum. Another alternative that the Commission believes has worked in the past, would be to encourage small entities to participate by offering them bidding credits if the reallocation is adopted and the spectrum is auctioned.

33. The FNPRM more specifically considers a variety of alternatives that could make frequencies available to incumbents, including small entities, who could be subject to relocation. For example, one alternative discussed in paragraphs 11–13 of the FNPRM would be to use spectrum in the 1910–1930 MHz or 2390–2400 MHz bands for relocation. A second alternative, discussed in paragraphs 27–28 of the FNPRM, would be to use some of the 2 GHz MSS spectrum for relocation. Paragraph 38 of the full FNPRM seeks comment on using the 2150–2160 MHz MDS band for relocation purposes. Any of these alternatives would facilitate the relocation of displaced incumbents, including small entities.

34. Finally, the Commission has already received extensive comments on issues related to the possible reallocation of the 2150–2160 MHz (2.1 GHz) spectrum for advanced wireless purposes. Comments filed by the multipoint distribution/instructional television fixed services industry and several equipment manufacturers argue that the 2.1 GHz band is necessary for the continued roll-out of fixed wireless services across the country. Other commenters support the use of 2.1 GHz for advanced wireless services.

We are considering both alternatives, and are attempting to minimize any negative impact on licensees, including small entities, in the 2150–2160 band. These alternatives are discussed in paragraphs 37–41of the FNPRM, and include the possibility of providing displaced incumbents with relocation spectrum or compensating such licensees.

F. Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rules

35. None.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–23047 Filed 9–12–01; 8:45 am]

BILLING CODE 6712–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[IB Docket No. 01–185, ET Docket No. 95–18; FCC 01–225]

Flexibility for Delivery of Communications By Mobile Satellite Service Providers in the 2 GHz Band, the L-Band and the 1.6/2.4 GHz Band; Amendment of Section 2.106 of the Commission's Rules To Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document addresses proposals made by two Mobile Satellite Service (MSS) operators to allow Mobile Satellite operators to reuse their assigned spectrum over land-based transmitters to improve service quality, particularly where the satellite signals are blocked by buildings or other

obstacles. This document also addresses other means by which the Commission could permit flexible use of MSS spectrum.

The MSS operators claim that permitting MSS operators the flexibility to use their assigned spectrum for ancillary terrestrial operations would bolster the commercial viability of MSS systems by allowing MSS operators to extend service to indoor and urban areas that otherwise would remain unserved by a satellite-only MSS network. The MSS operators claim that the improved service and customer base would, in turn, enable the MSS industry to offer lower prices and higher quality of service to rural and underserved areas. The NPRM seeks comment on approaches by which the Commission could permit more flexible use of MSS spectrum.

DATES: Submit comments on or before October 11, 2001; reply comments due on or before October 25, 2001. Written comments by the public on the proposed information collections are due on or before October 11, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before November 13, 2001.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: James L. Ball, Associate Chief, International Bureau (202) 418–0427, or Breck Blalock, Deputy Chief, Planning and Negotiations Division, International Bureau (202) 418–8191. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* IB Docket No. 01–185, ET Docket No. 95–18, adopted August 9, 2001 and released August 17, 2001. The full text of this *Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW, Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS''), Portals II, 445 12th Street, SW Room CY–B402, Washington, DC 20554.

Interested parties may file comments by using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. The Commission will consider all relevant and timely comments prior to taking final action in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Parties not filing via ECFS are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message: ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

Paperwork Reduction Act

This NPRM contains proposed information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due November 13, 2001. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX. (New collection).

Title: Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 143.

Number of Responses: 440.

Estimated Time Per Response: 4–31 hours.

Frequency of Response: On occasion reporting and third party disclosures.

Total Annual Burden: 3,082 hours.

Total Annual Costs: $141,000.

Needs and Uses: In this proceeding, the Commission releases an NPRM that seeks comment on issues regarding whether and how the Commission might bring flexibility to the delivery of Mobile Satellite Service. The proposals contained in this NPRM would result in new or modified information collection requirements that would be necessary to facilitate the proposed rules if and when they become definitive. The information collections would be used by the Commission under its authority to license commercial satellite services in the U.S.

Synopsis

On August 9, 2001 the Federal Communications Commission (Commission) adopted a Notice of Proposed Rulemaking (NPRM) seeking comment on: (1) Proposals submitted by two satellite operators to allow flexibility in the delivery of communications by mobile satellite service (MSS) providers, and (2) other options pertaining to flexible use of MSS spectrum. Specifically, the Commission seeks comment on: (1) The specific proposals made by MSS operators outlined below, (2) an alternative proposal that would allow an entity to use MSS spectrum to provide terrestrial service in conjunction with (or alternatively to) MSS, and (3) whether the Commission should consider allowing MSS operators in Big LEO bands to provide terrestrial services in these bands.

In the NPRM, the Commission seeks comment on approaches by which the

Commission may permit more flexible use of MSS spectrum. The Commission recognizes that this concept raises new issues regarding allocation and licensing of spectrum-based services, particularly different approaches for licensing satellite and terrestrial services. The Commission intends to establish a record on a variety of policy, economic, and technical issues raised by the MSS Petitioners' proposals, including potentially innovative ideas that may result in improved quality and availability of services to the public.

First, both New ICO Global Communications (Holdings) Ltd. (New ICO) and Motient Services, Inc. (Motient) (collectively, the MSS Petitioners) filed proposals with the Commission, suggesting incorporation of a wireless ''ancillary terrestrial component'' (ATC) in their MSS networks. To date, MSS operators have not been allowed to provide terrestrial operations. These parties contend that although a satellite system is ideally suited to serve rural areas, it is technically more difficult for MSS systems to deliver service in urban areas where satellite signals may be blocked. In initiating the proceeding, the Commission recognizes the potential long-term benefits of expanded use of MSS, such as deployment of broadband services to rural areas.

The NPRM seeks comment on the MSS Petitioners' claims that allowing terrestrial operations in conjunction with MSS networks is important to ensure the commercial viability of MSS systems, and that such flexibility will promote the Commission's goal of bringing access to advanced communications services to rural and underserved areas of the country. The NPRM seeks comment on the severity of the signal problems that underlie the MSS Petitioners' proposals. Further, the NPRM asks: should we view the MSS Petitioners' proposals as indicating that too much spectrum has been allocated for MSS? Would using this spectrum for terrestrial service in urban areas diminish spectrum capacity for satellite service to rural and unserved areas? Does the technology exist to provide this integrated service? Would it be in the public interest to adopt a segmentation plan wherein separated bands for terrestrial services would be identified and available for licensing to a larger group of parties, for example, through an auctions process? Are technological advances likely to occur in the next few years that will change the nature of the sharing relationship between terrestrial and satellite services in the near future?

The NPRM also seeks comment on the following issues that would arise if the MSS Petitioners' proposal were adopted: (1) Conditions on the use of terrestrial components to ensure ancillary operation, such that 2 GHz band MSS operators would be required to demonstrate that they can provide space segment service covering all 50 states, Puerto Rico, and the Virgin Islands 100% of the time, and L-band operators would be required to demonstrate that they can provide space segment service across their entire satellite coverage area, (2) licensing requirements, such that for U.S.-licensed systems, the licenses would permit these additional operations, and for non-U.S. licensed systems, authority for such operations would be provided for in Declaratory Orders reserving spectrum for the non-U.S. licensed systems, (3) technical issues and rules modeled on rules in place for broadband PCS [1], (4) modifications to the Table of Allocations, and (5) the impact on existing relocation and reimbursement rules.

With respect to technical issues, the NPRM seeks comment in the following specific areas relating to terrestrial operations in MSS bands: (1) Protection of adjacent and intra-band operations, (2) coordination with co-frequency systems, (3) frequency stability, (4) use of handheld terminals aboard aircraft, (5) system architecture, and (6) technical requirements specific to the L-band including extending special requirements relating to the protection of emergency operations and global radiolocation operations.

Second, the Commission seeks comment on an alternate plan: Making some MSS spectrum available for use by any entity to provide terrestrial service either in conjunction with MSS systems or as an alternative mobile service. Under this approach, portions of the spectrum currently designated for 2 GHz and L-band MSS would be made available for use by terrestrial operations, separated from the MSS operations in the bands, and possibly assigned by auction. The NPRM seeks comment on how such an identification and assignment process might work from the perspective of MSS operators and others interested in providing terrestrial services in this spectrum. The NPRM also seeks comment on the implications of section 309(j) with regard to this option.

Third, the NPRM seeks comment on whether the Commission should consider extending to Big LEOs MSS licensees the opportunity to incorporate terrestrial operations within the Big LEO MSS bands into their respective MSS networks. In particular, the NPRM seeks comment on whether the general approach discussed for 2 GHz and L-band MSS could be adopted for Big LEO MSS. In the alternative, the NPRM asks whether the Commission should consider opening the Big LEO MSS band to parties other than Big LEO licensees to provide services either in conjunction with Big LEO MSS operators or to provide additional alternative services.

Paperwork Reduction Analysis

The NPRM contains a proposed information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13.[2] Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due November 13, 2001. Comments should address:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility.
- The accuracy of the Commission's burden estimates.
- Ways to enhance the quality, utility, and clarity of the information collected.
- Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Written comments by the public on the proposed information collections are due November 13, 2001. In addition to filing comments with the Secretary, a copy of any comments on the proposed information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Virginia Huth, OMB Desk Officer, 10236 New Executive Office Building, 725 17th Street, NW., Washington, DC

[1] The NPRM seeks comment on these specific technical issues: (1) protection of adjacent and intra-band operations, (2) coordination with co-frequency systems, (3) frequency stability, (4) use of handheld terminals aboard aircraft, (5) system architecture, and (6) technical requirements specific to the L-band including extending special requirements relating to the protection of emergency operations and global radiolocation operations.

[2] *See generally* 44 U.S.C. 3501–3520.

20503, or via the Internet to *fain_t@al.eop.gov.*

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),[3] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines provided in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for and Objectives of the Proposed Rules

This NPRM seeks comment on proposals to bring flexibility to delivery of MSS. The NPRM seeks comment on issues regarding whether and how we might bring flexibility to MSS either by: (1) permitting MSS operators to provide coverage to areas where the MSS system is attenuated by integrating terrestrial operations within their networks using assigned MSS frequencies, as has been proposed by two operators, or (2) opening up portions of the 2 GHz and L-band for MSS or terrestrial operators to provide a stand-alone terrestrial service offered in conjunction with MSS or use it for additional alternative services. We believe that permitting greater flexibility would reduce regulatory burdens and, with minimal disruption to existing permittees and licensees, result in the continued development of 2 GHz and L-band MSS and other satellite services to the public.

2. Legal Basis

This action is taken pursuant to sections 1, and 4(i) and (j) of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), and section 201(c)(11) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 721(c)(11), and section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' under section 3 of the Small Business Act.[5] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[6]

The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit fixed-satellite or mobile satellite service operators. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified.[7] This definition provides that a small entity is one with $11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified which could potentially fall into the 2 GHz, L-band, or Big LEO MSS category. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities. The rules proposed in this NPRM apply only to entities providing 2 GHz, L-band, or Big LEO mobile satellite service. Small businesses may not have the financial ability to become 2 GHz MSS system operators because of the high implementation costs associated with satellite systems and services. At least one of the 2 GHz MSS licensees and one of the Big LEO licensees may be considered a small business at this time. We expect, however, that by the time of implementation they will no longer be considered small businesses due to the capital requirements for launching and operating its proposed system. Since there is limited spectrum and orbital resources available for assignment at 2 GHz, we estimate that no more than eight entities will be approved by the Commission as operators providing these services. Therefore, because of the high implementation costs and the limited spectrum resources, we do not believe that small entities will be impacted by this rulemaking to a great extent.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed action in this NPRM would affect those entities applying for 2 GHz, L-band, and Big LEO MSS space station authorizations and those applying to participate in assignment of 2 GHz, L-band, and Big LEO MSS spectrum. In this NPRM, we seek comment on requiring U.S.-licensed operators to file an authorization request to use terrestrial facilities and to demonstrate that the eligibility criteria have been met. Foreign-licensed operators would be required to file a Letter of Intent and/or an appropriate earth station authorization, including the terrestrial facilities as part of the application, demonstrating compliance with the eligibility and coverage requirements. We seek comment on alternatives to these proposed licensing requirements.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In developing the proposals contained in this NPRM, we have attempted to allow flexibility for efficient operations by all participants in the 2 GHz, L-band, and Big LEO MSS market, regardless of size, consistent with our other objectives. We believe the proposed conditions under which these entities would be granted this additional flexibility would not impose a significant economic impact on small entities because: (1) The conditions are reasonable and not overly burdensome and (2) as mentioned above, we do not expect small entities to be impacted by this rulemaking due to the substantial implementation costs involved. Nonetheless, we seek comment on the impact of our proposals on small

[3] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[4] 5 U.S.C. 603(b)(3).

[5] 5 U.S.C. 601(3).

[6] 5 U.S.C. 632.

[7] 13 CFR 121.201, NAICS Code 51334.

entities and on any possible alternatives that could minimize any such impact.

6. Federal Rules That May Duplicate, Overlap, or Conflict With Proposed Rules

None.

Deadlines and Instructions for Filing Comments

Under §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Further Notice of Proposed Rule Making on or before October 11, 2001. Reply comments are due October 25, 2001. Interested parties may file comments by using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[8] The Commission will consider all relevant and timely comments prior to taking final action in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Parties not filing via ECFS are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

Ordering Clauses

Accordingly, It Is Ordered that pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, this *Notice of Proposed Rulemaking* is adopted.

It Is Further Ordered that the Commission's Consumer Information Bureau, Reference Information Center, Shall Send a copy of this *Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–23048 Filed 9–12–01; 8:45 am]

BILLING CODE 6712–01–P

[8] *See Electronic Filing of Documents in Rulemaking Proceedings,* Memorandum Opinion and Order, 13 FCC Rcd 21,517 (1998); *Electronic Filing of Documents in Rulemaking Proceedings,* Report and Order, 13 FCC Rcd 11,322 (1998).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D. 050101B]

Endangered and Threatened Species; Notice of Public Hearings on Proposed Rule Governing Take of Four Threatened Evolutionarily Significant Units (ESUs) of West Coast Salmonids: California Central Valley Spring-run chinook; California Coastal chinook; Northern California steelhead; Central California Coast coho

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

ACTION: Request for comment and announcement of public hearings.

SUMMARY: On August 17, 2001, NMFS proposed an Endangered Species Act (ESA) 4(d) protective rule for four threatened salmonid ESUs that occur in California. The proposed 4(d) rule would apply the take prohibitions in section 9(a)(1) of the ESA in most circumstances to California Central Valley spring chinook, California Coastal chinook, and Northern California steelhead which currently have no 4(d) protective regulation in place. However, for these three threatened ESUs, NMFS is proposing 10 categories of activities for which the take prohibitions would not apply. For the threatened Central California Coast coho salmon ESU, NMFS is proposing to amend the existing 4(d) rule to establish the same 10 limitations on the take prohibitions that are being proposed for the other threatened ESUs covered by this rule.

This **Federal Register** document announces three public hearings that NMFS has scheduled to provide the public with opportunities to comment on the proposed protective rule and to provide information to the public about the rule.

DATES: Comments on the proposed 4(d) rule must be received on or before October 1, 2001. Public hearings on the proposed ESA 4(d) rule will be held as follows: (1) September 13, 2001, 6–9 p.m., Chico, CA; (2) September 18, 2001, 6–9 p.m., Eureka, CA; and (3) September 20, 2001, 6–9 p.m., Ukiah, CA.

ADDRESSES: Comments on the proposed 4(d) rule should be sent to the Assistant Regional Administrator, Protected Resources Division, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Comments will not be accepted via e-mail or Internet

The hearings will be held at the following locations:

(1) Chico, CA—Chico Masonic Family Center' 1110 West East Avenue, Chico, CA 95926;

(2) Eureka, CA—Eureka Inn, 518 7th Street, Eureka, CA, 95501; and

(3) Ukiah, CA—Ukiah Valley Conference Center, 200 South School Street, Ukiah, CA 95482.

FOR FURTHER INFORMATION CONTACT: Craig Wingert at 562–980–4021; Miles Croom at 707–575–6068; Diane Windham at 916–930–3601, Greg Bryant at 707–825–5162, or Chris Mobley at 301–713–1401. Copies of the **Federal Register** documents cited herein and additional salmon-related materials are available via the Internet at *http://swr.nmfs.noaa.gov* or *http://nwr.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 16, 1999, NMFS published a final rule listing the California Central Valley spring-run chinook and California Coastal chinook ESUs as threatened species (64 FR 50394). In a final rule published on June 7, 2000, NMFS also listed the Northern California steelhead ESU as a threatened species (65 FR 36074). These final rules describe the background for the listing actions and provide a summary of NMFS' conclusions regarding the status of the three ESUs. No protective regulations, pursuant to section 4(d) of the ESA, have been promulgated for these three ESUs. On October 31, 1996, NMFS listed the Central California Coast coho salmon ESU as a threatened species and simultaneously promulgated a 4(d) which imposed the section 9(a)(1) take prohibitions on this ESU (61 FR 56138). This 4(d) rule, however, does not include any of the take limitations which NMFS has incorporated into subsequent 4(d) rules for threatened salmonid ESUs (65 FR 42422).

On August 17, 2001, NMFS proposed an ESA 4(d) protective rule for these four threatened salmonid ESUs (66 FR 43150). The proposed 4(d) rule would apply the take prohibitions in section 9(a)(1) of the ESA, in most circumstances, to the California Central Valley spring chinook, California Coastal chinook, and Northern California steelhead ESUs. In addition to applying the section 9 take prohibitions, the proposed 4(d) rule would establish 10 categories of activities for which the take prohibitions would not apply for each of these three ESUs. NMFS believes these activities, if conducted as described in the proposed rule, would contribute to the conservation of the threatened salmonid ESUs. For the threatened Central California Coast coho salmon ESU, NMFS is proposing to amend the existing 4(d) rule which applies the section 9 take prohibitions to this ESU in order to establish the same 10 limitations on the take prohibitions that are being proposed for the other threatened ESUs covered by the rule.

Public Hearings

Public hearings on the proposed ESA 4(d) rule provide the opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS encourages public involvement in such ESA matters and has decided to schedule hearings on these proposals prior to being requested to do so.

NMFS is soliciting specific information, comments, data, and/or recommendations on any aspect of the proposed 4(d) rule from all interested parties. In particular, NMFS is requesting information or data as described in the **Federal Register** documents announcing the proposed 4(d) rule. NMFS will consider all information, comments, and recommendations received before reaching a final decision.

The public will have the opportunity to provide oral and written testimony at the public hearings. Written comments on the proposals may also be submitted (see **DATES** and **ADDRESSES**).

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other aids should be directed to Craig Wingert (see **ADDRESSES**) by 7 days prior to each hearing date.

Dated: September 10, 2001.

Phil Williams,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–23007 Filed 9–10–01; 2:46 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 178

Thursday, September 13, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; WIC Farmers' Market Nutrition Program (FMNP) Financial Report (Form FNS–683); WIC Farmers' Market Nutrition Program Recipient Report (Form FNS–203); and WIC Farmers' Market Nutrition Program Regulations

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of FNS to request revisions to currently approved information collections, Form FNS–683 and Form FNS–203.

DATES: Written or faxed comments on this notice must be received by November 13, 2001.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be faxed to the attention of Patricia N. Daniels at (703) 305–2196.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 1414.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instructions should be directed to: Debra Whitford, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Title: The WIC Farmers' Market Nutrition Program Financial Report (Form FNS–683); WIC Farmers' Market Nutrition Program Recipient Report (Form FNS–203); and WIC Farmers' Market Nutrition Program Regulations.

OMB Number: 0584–0447.

Form Numbers: Form FNS–683, Form FNS–203, and FMNP regulations.

Expiration Date: October 31, 2001.

Type of Request: Revision to a Currently Approved Collection Form.

Abstract: Pursuant to Section 17(m)(8) of the Child Nutrition Act of 1966, 42 U.S.C. § 1786(m)(8), 7 CFR 248.23 of the WIC Farmers' Market Nutrition Program (FMNP) regulations requires that certain Program-related information be compiled and submitted to FNS. Each State agency administering the FMNP is required to use FNS–683 and FNS–203 to report financial and participation data to the Secretary as required by 7 CFR Part 3016. FNS will use this information for funding and program management decisions. Based on the previous submission of reporting and recordkeeping requirements for the FMNP, 35 State agencies were operating the program. However, currently 41 State agencies operate the FMNP. No new program requirements have been added to change or increase the number of hours per response. Therefore, based on an increase in respondents, a revision to the reporting and recordkeeping burden is necessary.

Respondents: State Directors or Administrators of the FMNP.

Estimated Number of Respondents: 41 respondents for FNS Forms and 2009 for FMNP Regulations.

Number of Responses per Respondent: 2.

Form FNS–683

Number of Responses per Respondent: One.

Estimated Time per Response: 3 hours.

Total Reporting Burden: 41 × 1 × 3 = 123 hours.

Form FNS–203

Number of Responses per Respondent: One.

Estimated Time per Response: 1 hour.

Total Reporting Burden: 41 × 1 × 1 = 41 hours.

FMNP Regulations

Reporting Burden

Estimated Number of Respondents: 2009.

Estimated Number of Responses per Respondent: One.

Estimated Time per Response: 2.2205 hours.

Total Reporting Burden: 2009 × 1 × 2.2205 = 4461 hours.

Recordkeeping Burden

Estimated Number of Respondents: 41.

Estimated Number of Responses per Respondent: 4.

Estimated Time per Recordkeeping: 1.75 hours.

Total Recordkeeping Burden: 41 × 4 × 1.75 = 287 hours.

Total Reporting and Recordkeeping Burden: 123 + 41 + 4461 + 287 = 4912 hours.

These requirements, together with the financial and recipient reporting requirements give an overall total of 80.5 hours per response. These totals include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. As noted above, these hours remain unchanged from the previous submission.

Estimated Total Annual Burden on Respondents: 4912 hours.

Dated: September 7, 2001.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

BILLING CODE 3410–30–U

ICB Accounting Requirements

July 17,2001

WIC Farmers' Market Nutrition Program

Reporting and Recordkeeping Requirement

Section of the FMNP Regulation	Title	Form No.	Estimated No. of Respondents	Reports Filed Annually	Total Annual Responses	No. of Manhours per Response	Estimated Manhours
Reporting:							
248.4	State Plan	None	41	1	41	40	1640
248.10 (a) (2),(3)	Selection of Farmers/Farmers' Markets	None	1622	1	1622	1	1622
248.0 (e)	Monitoring/Review of Farmers/Farmers' Markets	None	162	1	162	2	324
248.10 (f)	Coupon Management System	None	41	1	41	5	205
248.11	Financial Managment System	None	41	1	41	10	410
248.17(b) (2) (ii)	State Agency Corrective Action Plan	None	8	1	8	10	80
248.18 (b)	Audit Responses	None	12	1	12	15	180
248.23 (b)	Financial and Recipient Reports	FNS 683	41	1	41	3	123
		FNS 203	41	1	41	1	41
Total			2009	9	2009	87	4625
Recordkeeping:							
248.9	Nutrition Education (3 years)	None	41	1	41	1	41
248.10 (b)	Farmer/Farmers Market Agreements (3years)	None	41	1	41	2	82
248.10 (e)	Summary of Market Monitoring (3 years	None	41	1	41	2	82
248.11 (c)	Record of Financial Expenditures (3 years)	None	41	1	41	2	82
Total			164	4	164	7	287
Total Reporting and Recordkeeping for FMNP Regulations							4912

[FR Doc. 01–22980 Filed 9–12–01; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF COMMERCE

Economic Development Administration

Petition by a Firm for Certification of Eligibility To Apply for Trade Adjustment Assistance

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 13, 2001.

ADDRESSES: Direct all written comments to Madeleine G. Clayton, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 or via e-mail at mclayton@doc.com.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patricia A. Flynn, Director, Operations Review and Analysis Division, Economic Development Administration, Room 7015, Washington, DC 20230, telephone: (202) 482–5353.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to ascertain whether a firm is eligible to apply for trade adjustment assistance. To be certified eligible, a firm must demonstrate that increased imports of articles directly competitive with its products contributed importantly to declines in sales or production and to actual or threatened job loss impact of increased imports. The information is required under Chapter 3 of Title II of the Trade Act of l974, as amended.

II. Method of Collection

The form is used by firms affected by import competition to petition EDA for certification of impact. Information submitted in the petition form is a major phase in obtaining a firm's history, including sales, production and employment data (the firm provides quarterly unemployment security forms submitted to the state, a description of the products produced by such firm, tax returns and/or financial statements, a firm's decline in sales accounts, and brochures of such firm's production).

III. Data

OMB Number: 0610–0091.

Agency Form Number: ED–840P.

Type of Review: Extension of a currently approved collection.

Burden: 1,576 hours.

Affected Public: Business firms which vary in size, including small firms.

Estimated Number of Respondents: 197.

Estimated Time per Response: 8 hours.

Estimated Total Annual Burden Hours: 1,576.

Estimated Total Annual Cost: $230,274.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; and they also will become a matter of public record.

Dated: September 7, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–22955 Filed 9–12–01; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Infocom Corporation, Inc., Tetrabal Corporation, Inc., Bayan Medhat Elashi, Ghassan Elashi, Basman Medhat Elashi, Ihsan Medhat, Ishan Medhat ''Sammy'' Elashi, Hazim Elashi, Fadwa Elafrangi

In the Matter of: Infocom Corporation, Inc., 630 International Parkway, Suite 100, Richardson, Texas 75081; Respondent and Tetrabal Corporation, Inc., 316 Candlewood Place, Richardson, Texas 75081; Bayan Medhat Elashi, 1810 Auburn, Richardson, Texas 75081; Ghassan Elashi, 304 Town House Lane, Richardson, Texas 75081; Basman Medhat Elashi, 1506 Willow Crest Drive, Richardson, Texas 75081; Ihsan Medhat ''Sammy'' Elashi, 316 Candlewood Place, Richardson, Texas 75081; Hazim Elashi, 937 Stone Trail Drive, Plano, Texas 75023; Fadwa Elafrangi, 306 Town House Lane, Richardson, Texas 75081, Related persons.

Order Temporarily Denying Export Privileges

Through the Office of Export Enforcement (''OEE''), the Bureau of Export Administration (''BXA''), U.S. Department of Commerce, has asked me to issue an order pursuant to § 766.24 of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2001)) (''EAR'' or ''Regulations'') [1], temporarily denying all U.S. export privileges to Infocom Corporation, Inc., 630 International Parkway, Suite 100, Richardson, Texas 75081 (''Infocom''). BXA has also asked that, pursuant to §§ 766.24(c) and 766.23 of the regulations, the order apply to the following persons who are related to Infocom:

Tetrabal Corporation, Inc., 316 Candlewood Place, Richardson, Texas 75081
Bayan Medhat Elashi, 1810 Auburn, Richardson, Texas 75081
Ghassan Elashi, 304 Town House Lane, Richardson, Texas 75081
Basman Medhat Elashi, 1506 Willow Crest Drive, Richardson, Texas 75081
Ihsan Medhat ''Sammy'' Elashi, 316 Candlewood Place, Richardson, Texas 75081
Hazin Elashi, 937 Stone Trail Drive, Plano, Texas 75023

[1] The Regulations were issued pursuant to the Export Administration Act of 1979 (''Act''), 50 U.S.C. app. secs. 2401–2420 (1994 & Supp. IV 1998), as reauthorized by Act of November 13, 2000, Pub. L. 106–508, 114 Stat. 2360. The Act lapsed on August 20, 2001. Pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. IV 1998)), the President, through Executive Order 13222 of August 17, 2001 (66 FR 44025 (August 22, 2001)), has continued the Regulations in force.

Fadwa Elafrangi, 306 Town House Lane, Richardson, Texas 75081

In its request, BXA states that, based upon an investigation by OEE, it believes that Infocom has violated the Regulations by shipping and attempting to ship goods to Libya and Syria without obtaining the necessary authorizations from BXA. Specifically, BXA has determined that Infocom made three shipments of computer equipment without the required export licenses from BXA. These were:

(1) A 1997 shipment of computer accessories to Malta that was, immediately upon its arrival in Malta, shipped to Libya. Infocom had dealt with a representative of the ultimate end-user in Libya in a manner that suggests that Infocom was aware that the goods were ultimately intended for that country. Infocom did not have the appropriate U.S. Government authorization to ship the goods to Libya. Additionally, Infocom did not disclose the identity of the ultimate consignee on the shipper's export declaration it filed for the shipment, listing instead a forwarder in Malta.

(2) An April 1999 shipment of one computer as well as memory chips and central processing units (''CPUs'') to Syria. Infocom made this shipment directly from Texas to Syria. The Regulations required Infocom to obtain an export license from BXA to make the shipment to Syria because the shipment contained items that were controlled for anti-terrorism reasons. Infocom did not receive an export license for this transaction.

(3) An August 2000 shipment of a computer to Syria without the required export license from BXA. In addition, Infocom undervalued the goods in this shipment on the export control documents.

Additionally, in June 1999, Infocom made an attempted shipment of CPUs to Syria. It used the same freight forwarder as the April 1999 shipment above. When the freight forwarder questioned whether the shipment required an export license, Infocom's Logistics Manager, Basman Elashi, stated that he had checked, and that it did not. Infocom did not complete the shipment through this freight forwarder. In fact, the shipment would have required a license from BXA.

In addition to these transactions, OEE's investigation also establishes that Infocom offered price quotations to other customers in Syria. It also suggests that Infocom has many contacts in third countries through whom it could send goods to Syria and Libya as it did the 1997 shipment through Malta.

Thus, OEE's investigation demonstrates that Infocom has made repeated exports without the required U.S. government authorization, and that it has attempted to conceal these shipments by undervaluing goods, filing false and deceptive SEDs, and avoiding freight forwarders that ask uncomfortable questions.

OEE's investigation has disclosed that one corporation and six natural persons are closely related by their ownership, control, affiliation, or connection with Infocom. All of the natural persons have received wages from Infocom. Their names, addresses, and relationships to Infocom are set out below as listed in documents available to OEE:

Tetrabal Corporation, Inc., 316 Candlewood Place, Richardson, Texas 75081

A business owned and operated by the same principals as Infocom and located at the same address.

Bayan Medhat Elashi, 1810 Auburn, Richardson, Texas 75081

Chief Executive Officer of Infocom

Ghassan Elashi, 304 Town House Lane, Richardson, Texas 75081

Vice President of Marketing of Infocom

Basman Medhat Elashi, 1506 Willow Crest Drive, Richardson, Texas 75081

Logistics Manager of Infocom

Ihsan Medhat ''Sammy'' Elashi, 316 Candlewood Place, Richardson, Texas 75081

Systems Consultant for Infocom

Hazim Elashi, 937 Stone Trail Drive, Plano, Texas 75023

Manager of Personal Computers Division of Infocom

Fadwa Elafrangi, 306 Town House Lane, Richardson, Texas 75081

Majority owner of Infocom

(During the course of the investigations, OEE investigators discovered different spellings for ''Elashi'' including: ''El Ashi,'' ''Elashyi,'' ''Elashye,'' and ''Ashi.'')

In light of the evidence cited above that Infocom has committed repeated violations of the regulations that are deliberate and covert, that its principals have actively sought to engage in further export transactions, and that, given the nature of the items shipped, future violations could go undetected. In addition, a temporary denial order is needed to give notice to companies in the United States and abroad that they should cease dealing with Infocom in export transactions involving U.S.-origin items. Such a temporary denial order is clearly consistent with the public interest to preclude future violations of the Regulations.

Accordingly, I am issuing this order because I have concluded that a TDO is necessary, in the public interest, to prevent an imminent violation of the regulations. This order is issued on an *ex parte* basis without a hearing based upon BXA's showing that expedited action is required.

It Is Therefore Ordered:

First, that Infocom Corporation, Inc., 630 International Parkway, Suite 100, Richardson, Texas 75081 (''the denied person'') and the following persons subject to the order by their relationship to the denied person, Tetrabal Corporation, Inc., 316 Candlewood Place, Richardson, Texas 75081; Bayan Medhat Elashi, 810 Auburn, Richardson, Texas 75081; Ghassan Elashi, 304 Town House Lane, Richardson, Texas 75081; Basman Medhat Elashi, 1506 Willow Crest Drive, Richardson, Texas 75081; Ihsan Medhat ''Sammy'' Elashi, 316 Candlewood Place, Richardson, Texas 75081; Hazim Elashi, 937 Stone Trail Drive, Plano, Texas 75023; Fadwa Elafrangi; 306 Town House Lane; Richardson, Texas 75081 (''the related persons'') (together, the denied person and the related persons are ''persons subject to this order'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (EAR), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a person subject to this order any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a person subject to this order of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a person subject to this order acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a person subject to this order of any item subject to the EAR that has been exported from the United States;

D. Obtain from a person subject to this order in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a person subject to this order, or service any item, of whatever origin, that is owned, possessed or controlled by a person subject to this order if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, in addition to the related persons named above, after notice and opportunity for comment as provided in § 766.23 of the EAR, any other person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this order.

Fourth, that this order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of § 766.24(e) of the regulations, Infocom may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022. A related person may appeal to the Administrative Law Judge at the aforesaid address in accordance with the provisions of § 766.23(c) of the regulations.

This Order is effective immediately and shall remain in effect for 180 days.

In accordance with the provisions of § 766.24(d) of the regulations, BXA may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. Infocom may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on Infocom and each related person and shall be published in the **Federal Register**.

Entered this 6th day of September, 2001.

Michael J. Garcia,

Assistant Secretary for Export Enforcement.

[FR Doc. 01–22948 Filed 9–12–01; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico

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

ACTION: Notice of preliminary results and rescission in part of antidumping duty administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of subject merchandise to the United States during the period August 1, 1999, through July 31, 2000, and one firm, CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V. We have preliminarily determined that, during the period of review, sales were made below normal value.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issues, and (2) a brief summary of the argument.

EFFECTIVE DATE: September 13, 2001.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi or Mark Ross, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5760, (202) 482–4794, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2001).

Background

On August 16, 2000, the Department published in the **Federal Register** a *Notice of Opportunity to Request Administrative Review* concerning the antidumping duty order on gray portland cement and clinker from Mexico (65 FR 49962). In accordance with 19 CFR 351.213, the petitioner, the Southern Tier Cement Committee (STCC), requested a review of CEMEX, S.A. de C.V. (CEMEX), CEMEX's affiliate, GCC Cemento, S.A. de C.V. (GCCC), and Apasco, S.A. de C.V. (Apasco). In addition, CEMEX and GCCC requested reviews of their own entries. On September 26, 2000, we published a *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews* (65 FR 58733) initiating this review. The period of review is August 1, 1999, through July 31, 2000. We determined that Apasco did not have any sales or shipments of subject merchandise to the United States during the period of review. Our review of Customs import data indicated that there were no entries of subject merchandise made by Apasco during the period of review. See Memorandum from Analyst to the File, dated March 27, 2001. Therefore, we are rescinding this review with respect to this manufacturer/exporter. We are now conducting a review of CEMEX and GCCC pursuant to section 751 of the Act.

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as ''other hydraulic cements.'' The HTS subheadings are provided for convenience and customs purposes only. Our written description of the scope of the proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, we verified sales information provided by CEMEX using standard verification procedures, including an examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in public versions of the verification reports.

Collapsing

Section 771(33) of the Act defines when two or more parties will be considered affiliated for purposes of an antidumping analysis. Moreover, 19 CFR 351.401(f) describes when we will treat two or more affiliated producers as a single entity (*i.e.,* ''collapse'' the firms) for purposes of calculating a dumping margin. In the five previous administrative reviews of this order, we analyzed and determined to collapse CEMEX and GCCC in accordance with our regulations. See, *e.g., Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review,* 66 FR 14889 (March 14, 2001), and accompanying decision memorandum at Comment 12.

The regulations state that we will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and we conclude that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the factors we may consider include the following: (i) The level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. See 19 CFR 351.401(f).

Having reviewed the current record, we find that the factual information underlying our decision to collapse these two entities has not changed from previous administrative reviews. CEMEX's indirect ownership of GCCC exceeds five percent, such that these two companies are affiliated pursuant to section 771(33)(E) of the Act. In addition, both CEMEX and GCCC satisfy the criteria for treatment of affiliated parties as a single entity described at 19 CFR 351.401(f)(1); both producers have production facilities for similar and identical products such that substantial retooling of their production facilities would not be necessary to restructure manufacturing priorities. Consequently, any minor retooling required could be accomplished swiftly and with relative ease.

We also find that there exists a significant potential for manipulation of prices and production as outlined under 19 CFR 351.401(f)(2). CEMEX indirectly owns a substantial percentage of GCCC. Also, CEMEX's managers or directors sit on the board of directors of GCCC and its affiliated companies. Accordingly, the percentage of ownership and interlocking boards of directors give rise to a significant potential for affecting GCCC's pricing and production decisions. See the Department's memorandum from Analyst to File, Collapsing CEMEX, S.A. and GCC Cemento, S.A. de C.V. for the Current Administrative Review, dated March 8, 2001 [1]. Therefore, we have collapsed CEMEX and GCCC into one entity and calculated a single weighted-average margin using information provided by CEMEX and GCCC in this review.

Export Price and Constructed Export Price

GCCC reported both constructed export price (CEP) and export price (EP) sales. On September 12, 2000, the Court of Appeals for the Federal Circuit (CAFC) ruled in *AK Steel Corp.* v. *United States,* 226 F.3d 1361, 1374 (Fed. Cir. 2000) (*AK Steel*), that, ''* * * if the contract for sale was between a U.S. affiliate of a producer or exporter and an unaffiliated U.S. purchaser, then the sale must be classified as a CEP sale.'' Having examined information on the record in this review we determined that GCCC's affiliated entity in the United States, Rio Grande Portland Cement Corporation (RGPCC), receives consideration for the subject merchandise that GCCC ships to its U.S. customers. We base this conclusion on the fact that the ordering, invoicing, and payment processes all take place between the unaffiliated U.S. customers and RGPCC. Therefore, in accordance with the CAFC's decision in *AK Steel,* we treated GCCC's reported EP sales as CEP sales. For further discussion, see the Preliminary Analysis Memorandum from Davina Hashmi to The File, dated August 30, 2001.

CEMEX reported CEP sales. For these sales transactions, we used CEP in accordance with section 772(b) of the Act for those sales to the first unaffiliated purchaser that took place after importation into the United States.

For both CEMEX and GCCC, we calculated CEP based on delivered prices to unaffiliated customers. Where appropriate, we made adjustments to the starting price for discounts and billing adjustments to the invoice price. In accordance with section 772(d) of the Act and 19 CFR 351.402(b), we deducted those selling expenses, including inventory carrying costs, that were associated with commercial activities in the United States and relate to the sale to an unaffiliated purchaser. We also made deductions for foreign brokerage and handling, foreign inland freight, U.S. inland freight and insurance, U.S. brokerage and handling, and U.S. duties, pursuant to section 772(c)(2)(A) of the Act. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. No other adjustments to EP or CEP were claimed or allowed.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers (*i.e.,* cement that was imported and further-processed into finished concrete by U.S. affiliates of foreign exporters), we preliminarily determine that the special rule under section 772(e) of the Act for merchandise with value added after importation is applicable.

Section 772(e) of the Act provides that, where the subject merchandise is imported by a person affiliated with the exporter or producer and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. Section 351.402(c)(2) of the regulations provides that normally we will determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if we estimate the value added to be at least 65 percent of the price charged to the

[1] Our decision to collapse both companies and treat them as a single entity is consistent with our decisions in earlier segments of this proceeding. See the Department's memoranda from Roland L. MacDonald to Joseph A. Spetrini pertaining to the 95/96 and 96/97 administrative reviews, dated August 20, 1998, and August 31, 1998, respectively. See, also the Department's memoranda from Analyst to File, Collapsing CEMEX, S.A. and GCC Cemento, S.A. de C.V. for the Current Administrative Review pertaining to the 97/98 and 98/99 administrative reviews, dated April 6, 1999, and July 28, 2000, respectively.

first unaffiliated purchaser for the merchandise as sold in the United States. Normally we will estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for the subject merchandise by the affiliated person. We will base this determination normally on averages of the prices and the value added to the subject merchandise. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP. See section 772(e) of the Act.

During the course of this administrative review, the respondent submitted information which allowed us to determine whether, in accordance with section 772(e) of the Act, the value added in the United States by its U.S. affiliates is likely to exceed substantially the value of the subject merchandise. To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for subject merchandise by the affiliated person. Based on this analysis, we estimate that the value added was at least 65 percent of the price the respondent charged to the first unaffiliated purchaser for the merchandise as sold in the United States. Therefore, we preliminarily determine that the value added is likely to exceed substantially the value of the subject merchandise. Also, the record indicates that there is a sufficient quantity of subject merchandise to provide a reasonable and appropriate basis for comparison. Accordingly, for purposes of determining dumping margins for the further-manufactured sales, we have assigned the respective preliminary weighted-average margin reflecting the rate calculated for sales of identical or other subject merchandise sold to unaffiliated purchasers.

Normal Value

A. Comparisons

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (NV), we compared the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Since the respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home-market sales.

During the period of review, the respondent sold Type II LA and Type V LA cement in the United States. The statute expresses a preference for matching U.S. sales to identical merchandise in the home market. The respondent sold cement produced as Type I, II LA, Type III, Type V, Type V LA, CPC 30 R, CPC 40, and CPO 40 cement in the home market. We have attempted to match the subject merchandise to identical merchandise in the home market. In situations where identical product types cannot be matched, we have attempted to match the subject merchandise to sales of similar merchandise in the home market. See sections 773(a)(1)(B) and 771(16) of the Act.

We have preliminarily determined that Type V LA, Type V, and Type III cement sales were made outside the ordinary course of trade. For further discussion concerning our ordinary-course-of-trade determination, see the ''Ordinary Course of Trade'' section in the decision memorandum from Laurie Parkhill, Office Director, to Richard Moreland, Deputy Assistant Secretary, Import Administration, dated August 30, 2001. Notwithstanding this fact, we found identical models upon which to base NV. We determined that CPO 40 cement produced and sold in the home market is the identical match to Type V LA cement sold in the United States during this review period. We also determined that Type II LA cement produced and sold in Mexico is the identical match to Type II LA cement sold in the United States during this review period. If we could not find an identical match to the cement types sold in the United States in the same month in which the U.S. sale was made or during the contemporaneous period, we based NV on similar merchandise. For further discussion of model matching, see the ''Model Matching'' section in the decision memorandum from Laurie Parkhill, Office Director, to Richard Moreland, Deputy Assistant Secretary, Import Administration, dated August 30, 2001.

On June 18, 1999, the North American Free Trade Agreement Binational Panel reviewing the final results of the 1994/95 administrative review found that the respondent's Type I bagged cement should not have been compared with sales of Type I cement sold in bulk to the United States in the calculation of normal value and remanded the results of the 1994/95 review to the Department for a recalculation of the margin. However, that proceeding has not yet been completed and the record in this review supports our continued practice of finding the respondent's sales of bagged cement in the home market comparable with sales of bulk cement in the United States, within the meaning of section 771(16)(B) of the Act, to U.S. sales. Specifically, in accordance with section 771(16)(B) of the Act, we find that both bulk and bagged cement are produced in the same country and by the same producer as the types sold in the United States, both bulk and bagged cement are like the types sold in the United States in component materials and in the purposes for which used, and both bulk and bagged cement are approximately equal in commercial value to the types sold in the United States. The questionnaire responses submitted by the respondent indicate that, with the exception of packaging, cement sold in bulk and in bags are physically identical and both are used in the production of concrete. Also, since there is no difference in the cost of production between cement sold in bulk or in bagged form (again with the exception of packaging), both are approximately equal in commercial value. See CEMEX's and GCCC's responses to the Department's original and supplemental questionnaires.

B. Ordinary Course of Trade

Section 773(a)(1)(B) of the Act requires the Department to base NV on ''the price at which the foreign like product is first sold (or in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.'' Ordinary course of trade is defined as ''the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.'' See section 771(15) of the Act.

In the instant review, we analyzed home-market sales of cement produced as Type V LA, Type V, and Type III cement. Pursuant to section 773(a)(1)(B) of the Act, we based our examination on the totality of circumstances surrounding the respondent's sales in Mexico that are produced as Type V LA, Type V, and Type III cement and, as in previous reviews of this order, we continue to find that the respondent's home-market sales of Type V LA, Type

V, and Type III cement made during the instant review period are outside the ordinary course of trade. See Decision Memorandum to Laurie Parkhill, Office Director, concerning Ordinary Course of Trade—Cement from Mexico (August 30, 2001). For the majority of the period of review, however, where there were contemporaneous sales of identical merchandise, we have used such sales in our analysis. See Comparison section above.

C. Arm's-Length Sales

To test whether sales to affiliated customers were made at arm's length, where we could test the prices, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was on average 99.5 percent or more of the price to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. Consistent with 19 CFR 351.403, we included these sales in our analysis. See *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27355 (May 19, 1997).

D. Cost of Production

The petitioner alleged on December 18, 2000, that the respondent sold gray portland cement and clinker in the home market at prices below the cost of production (COP). After examining the allegation, we determined that there were reasonable grounds to believe or suspect that the respondent had sold the subject merchandise in the home market at prices below the COP. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation in order to determine whether the respondent made home-market sales during the period of review at below-cost prices. See the memorandum from case analysts to Laurie Parkhill entitled Gray Portland Cement and Clinker from Mexico: Request to Initiate Cost Investigation (March 22, 2001).

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus amounts for home-market selling, general and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. We used the home-market sales data and COP information provided by the respondent in its questionnaire response.

After calculating a weighted-average COP, in accordance with section 773(b)(3) of the Act, we tested whether the home-market sales of the respondent were made at prices below COP within an extended period of time in substantial quantities and whether such prices permitted recovery of all costs within a reasonable period of time. We compared type-specific COPs to the reported home-market prices less any applicable movement charges, discounts and rebates, indirect selling expenses, commissions, and packing.

Pursuant to section 773(b)(2)(C) of the Act, if less than 20 percent of the respondent's sales of a certain type were at prices less than the COP, we do not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. If 20 percent or more of the respondent's sales of a certain type during the period of review were at prices less than the COP, such below-cost sales were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act. Based on comparisons of home-market prices to weighted-average COPs for the period of review, we determined that below-cost sales of all types of cement were not made in substantial quantities within an extended period of time, and, therefore, we did not disregard any below-cost sales.

E. Adjustments to Normal Value

Where appropriate, we adjusted home-market sales of cement produced as Type I, Type II LA, CPO 40, CPC 40, and CPC 30 R for discounts, rebates, packing, handling, interest revenue, and billing adjustments to the invoice price. In addition, we adjusted the starting price for inland freight, inland insurance, and pre-sale warehousing expenses. We also deducted home-market direct selling expenses from the home-market price and home-market indirect selling expenses as a CEP-offset adjustment (see Level of Trade/CEP Offset section below). In addition, in accordance with section 773(a)(6) of the Act, we deducted home-market packing costs and added U.S. packing costs.

Section 773(a)(6)(C)(ii) of the Act directs us to make an adjustment to NV to account for differences in the physical characteristics of merchandise where similar products are compared. Section 351.411(b) of the regulations directs us to consider differences in variable costs associated with the physical differences in the merchandise. Where we matched U.S. sales of subject merchandise to similar models in the home market, we adjusted for differences in merchandise.

F. Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade as the CEP. The NV level of trade is that of the starting-price sales in the home market or, when NV is based on constructed value (CV), that of sales from which we derive selling, general and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under Section 772(d) of the Act.

To determine whether NV sales are at a different level of trade than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). See *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732–33 (November 19, 1997).

With respect to U.S. sales, we conclude that CEMEX's and GCCC's sales to various classes of customers which purchase both bulk and bagged cement constituted two separate levels of trade, one CEMEX U.S. level of trade and one GCCC U.S. level of trade. We based our conclusion on our analysis of each company's reported selling functions and sales channels after making deductions for selling expenses under section 772(d) of the Act. We found that CEMEX and GCCC performed different sales functions for sales to their respective U.S. affiliates. For instance, CEMEX reported that it performed technical advice, solicitation of orders/customer visits, account receivable management, post-sale warehousing, and communication activities whereas GCCC reported that it did not perform any of these activities.

Based on our analysis of the respondent's reported selling functions and sales channels, we conclude that the respondent's home-market sales to various classes of customers which purchase both bulk and bagged cement constitute one level of trade. We found that, with some minor exceptions, CEMEX and GCCC performed the same selling functions to varying degrees in similar channels of distribution. We also concluded that the variations in selling functions were not substantial when all selling expenses were considered as a whole. See the memorandum entitled Gray Portland Cement and Clinker from Mexico: Level-of-Trade Analysis for the Tenth Administrative Review, dated August 30, 2001.

Furthermore, the respondent's home-market sales occur at a different and more advanced stage of distribution than its sales to the United States. For example, the CEMEX U.S. level of trade does not include activities such as market research, after-sales service/warranties, advertising, and packing whereas the home-market level of trade includes these activities. Similarly, the GCCC U.S. level of trade does not include activities such as market research, technical advice, advertising, customer approval, solicitation of orders, computer/legal/accounting/business systems, sales promotion, sales forecasting, strategic and economic planning, personnel training/exchange, and procurement and sourcing services whereas the home-market level of trade includes these activities.

As a result of our level-of-trade analysis, we could not match U.S. sales at either of the two U.S. levels of trade to sales at the same level of trade in the home market because there are no home-market sales at the same level of trade. Moreover, we determined that the level of trade of the home-market sales is more advanced than the levels of the U.S. sales. In addition, because we found only one home-market level of trade, we could not determine a level-of-trade adjustment based on the collapsed entity's home-market sales of merchandise under review. Therefore, we have determined that the data available do not provide an appropriate basis on which to calculate a level-of-trade adjustment. Thus, we made a CEP-offset adjustment in accordance with section 773(a)(7)(B) of the Act for the respondent's CEP sales. In accordance with section 773(a)(7) of the Act, we calculated the CEP offset as the lesser of the following: (1) The indirect selling expenses on the home-market sale, or (2) the indirect selling expenses deducted from the starting price in calculating CEP. See the Level-of-Trade Analysis memorandum.

Currency Conversion

Pursuant to section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine the dumping margin for the collapsed parties, CEMEX and GCCC, for the period August 1, 1999, through July 31, 2000, to be 48.53 percent.

We will disclose calculations performed in connection with these preliminary results to parties within five days of the date of publication of this notice. See 19 CFR 351.224(b). Interested parties may request a hearing within 30 days of publication of this notice. A hearing, if requested, will be held at the main Commerce Department building three days after submission of rebuttal briefs.

Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties may be filed no later than 30 days after publication of this notice. Rebuttal briefs, limited to the issues raised in case briefs, may be submitted no later than five days after the deadline for filing case briefs.

Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument with an electronic version included.

Upon completion of this review, the Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific assessment rates based on the entered value for subject merchandise sold during the period of review. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the respondent will be the rate determined in the final results of review; (2) for previously reviewed or investigated companies not mentioned above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will be 61.35 percent, the all-others rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double dumping duties. We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–23031 Filed 9–12–01; 8:45 am]

BILLING CODE 3510–DS–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–433]

NAFTA: Probable Economic Effect of Accelerated Tariff Elimination

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: September 10, 2001.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on August 30, 2001, the Commission instituted Investigation No. 332–433, NAFTA: Probable Economic Effect of Accelerated Tariff Elimination, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide advice to the President and the USTR with respect to each article listed in an attachment to the USTR letter as to the probable economic effect of the elimination of the U.S. tariff under the North American Free Trade Agreement (NAFTA) on domestic industries producing like or directly competitive articles, workers in these industries, and on consumers of the affected goods. All of the listed articles are footwear products. The USTR asked that the Commission provide its advice no later than October 12, 2001.

FOR FURTHER INFORMATION CONTACT: For general information, contact Laura Rodriguez (202–205–3499; *lrodriguez@usitc.gov*), of the Office of Industries; for information on legal aspects, contact William Gearhart (202–205–3091; *wgearhart@usitc.gov*) of the Office of the General Counsel. The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*).

Background

The letter from the USTR stated that the United States and Mexico have agreed to enter into consultations to consider acceleration of the elimination of tariffs on certain articles. Section 201(b)(1) of the North American Free Trade Agreement Implementation Act (the ''Act'') authorizes the President, subject to the consultation and layover requirements of section 103(a) of the Act, to proclaim such modifications as the United States may agree to with Mexico or Canada regarding the staging of any duty treatment set forth in Annex 302.2 of the NAFTA. One of the requirements set out in section 103(a) of the Act is that the President obtain advice regarding the proposed action from the Commission. The USTR requested advice with respect to NAFTA-qualifying articles from Mexico entered under the following subheadings of the Harmonized Tariff Schedule of the United States: 6402.3090, 6404.1120, 6404.1950, 6404.2040, 6406.1045, 6402.9160, 6404.1915, 6404.1960, 6404.2060, 6402.9170, 6404.1925, 6404.1970, 6406.1005, 6402.9960, 6404.1930, 6404.1980, 6406.1010, 6402.9970, 6404.1935, 6404.2020, 6406.1020.

Written Submissions

The Commission will not hold a public hearing in connection with the advice provided under this investigation. However, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). The Commission's rules do not authorize filing of submissions by facsimile or electronic means. All written submissions, except for confidential business information, will be made 2 available for inspection by interested persons in the Office of the Secretary to the Commission. Written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than the close of business on September 28, 2001. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Issued: September 10, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–23030 Filed 9–12–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Codeon Corporation

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Codeon Corporation, a revocable, non-assignable, exclusive license to practice in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 5,195,163 (Navy Case No. 73,281) issued March 16, 1993, entitled ''Fabrication and Phase Tuning of an Optical Waveguide Device,'' and U.S. Patent No. 5,259,061 (Navy Case No. 75,085) issued November 2, 1993, entitled ''Fabrication and Phase Tuning of an Optical Waveguide Device.''

DATES: Anyone wishing to object to the granting of these licenses must file written objections along with supporting evidence, if any, not later than November 13, 2001.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: August 30, 2001.

Robert E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–23025 Filed 9–12–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Student Financial Assistance; Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice of interest rates for the Federal Family Education Loan Program for the period July 1, 2001, through June 30, 2002.

SUMMARY: The Chief Operating Officer for the Office of Student Financial Assistance announces the interest rates for variable-rate loans made under the Federal Family Education Loan (FFEL) Program for the period July 1, 2001, through June 30, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Smith, Program Specialist. Mailing address: Program Development Division, Student Financial Assistance, U.S. Department of Education, Room 3045, ROB–3, 400 Maryland Avenue, SW, Washington, DC 20202–5345. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

General

Under title IV, part B of the Higher Education Act of 1965, as amended, (HEA), 20 U.S.C. Section 1071, *et seq.*, most loans made to student and parent borrowers under the FFEL Program have variable interest rates.

The formulas for determining the interest on variable rate FFEL Program loans are established in section 427A of the HEA (20 U.S.C. 1077a).

The interest rates on variable-rate loans are determined annually and apply to the following 12-month period beginning July 1 and ending June 30.

As described below, interest rate caps apply to most FFEL Program loans.

FFEL interest rate formulas use the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held before June 1 of each year plus a statutorily established add-on to determine the variable interest rate for—

- FFEL fixed-rate Stafford loans first disbursed before October 1, 1992 that have been converted to variable-rate loans;
- All FFEL Subsidized and Unsubsidized Stafford Loans first disbursed after October 1, 1992;
- FFEL PLUS loans first disbursed on or after July 1, 1998; and
- FFEL Consolidation Loans for which the Consolidation Loan application was received by the lender on or after November 13, 1997 and before October 1, 1998.

The bond equivalent rate of the 91-day Treasury bills auctioned on May 29, 2001, which is used to calculate the interest rates for the one year period beginning on July 1, 2001, is 3.688 percent (rounded to 3.69 percent).

For FFEL PLUS loans first disbursed before July 1, 1998, interest rates are calculated based on the weekly average of a 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26.

On June 22, 2001, the Board of Governors of the Federal Reserve System published the 1-year constant maturity Treasury yield average as 3.46 percent.

Interest Rates for ''Converted'' Variable-Rate FFEL Stafford Loans

1. Under section 427A(i)(7) of the HEA, loans that were originally made with a fixed interest rate of eight percent with an increase to ten percent four years after commencement of the repayment period were converted to a variable interest rate that may not exceed 10 percent: The interest rate for these loans for the period from July 1, 2001, through June 30, 2002, is 6.94 percent (3.69 percent plus 3.25 percent equals 6.94 percent).

2. Loans with fixed interest rates of seven percent, eight percent, nine percent, or eight percent with an increase to ten percent four years after commencement of the repayment period, that were subject to the provisions of section 427A(i)(3) of the HEA and were converted to variable-rate loans—the interest rate may not exceed seven percent, eight percent, nine percent, or ten percent, respectively: The interest rate for the period from July 1, 2001, through June 30, 2002, is 6.79 percent (3.69 percent plus 3.1 percent equals 6.79 percent).

Interest Rates for Variable-Rate FFEL Stafford Loans

1. FFEL Stafford loans made to ''new'' borrowers for which the first disbursement was made (a) on or after October 1, 1992, but before July 1, 1994, or (b) on or after July 1, 1994, for a period of enrollment ending before July 1, 1994—the interest rate may not exceed 9 percent: The interest rate for the period from July 1, 2001, through June 30, 2002, is 6.79 percent (3.69 percent plus 3.1 percent equals 6.79 percent).

2. FFEL Stafford loans made to all borrowers, regardless of prior borrowing, for periods of enrollment that include or begin on or after July 1, 1994, for which the first disbursement was made on or after July 1, 1994, but before July 1, 1995—the interest rate may not exceed 8.25 percent: The interest rate for the period from July 1, 2001, through June 30, 2002, is 6.79 percent (3.69 percent plus 3.1 percent equals 6.79 percent).

3. FFEL Stafford loans made to all borrowers, regardless of prior borrowing, on or after July 1, 1995, but before July 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, or deferment period: The interest rate for the period from July 1, 2001, through June 30, 2002, is 6.19 percent (3.69 percent plus 2.5 percent equals 6.19 percent); and

(b) During all other periods: The interest rate for the period from July 1, 2001, through June 30, 2002, is 6.79 percent (3.69 percent plus 3.1 percent equals 6.79 percent).

4. FFEL Stafford loans, first disbursed on or after July 1, 1998, but before July 1, 2003—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: The interest rate for the period from July 1, 2001, through June 30, 2002, is 5.39 percent (3.69 percent plus 1.7 percent equals 5.39 percent); and

(b) During all other periods: The interest rate for the period from July 1, 2001, through June 30, 2002, is 5.99 percent (3.69 percent plus 2.3 percent equals 5.99 percent).

Interest Rates for FFEL PLUS and FFEL Supplemental Loans for Students (SLS) Loans

1. Variable-rate FFEL PLUS and FFEL SLS loans first disbursed before October 1, 1992—the interest rate may not exceed 12 percent: The interest rate for the period from July 1, 2001, through June 30, 2002, is 6.71 percent (3.46 percent plus 3.25 percent equals 6.71 percent).

2. FFEL SLS loans first disbursed on or after October 1, 1992, for a period of enrollment beginning before July 1, 1994—the interest rate may not exceed 11 percent: The interest rate for the period from July 1, 2001, through June 30, 2002, is 6.56 percent (3.46 percent plus 3.1 percent equals 6.56 percent).

3. FFEL PLUS loans first disbursed on or after October 1, 1992, but before July 1, 1994—the interest rate may not exceed 10 percent: The interest rate for the period from July 1, 2001, through June 30, 2002, is 6.56 percent (3.46 percent plus 3.1 percent equals 6.56 percent).

4. FFEL PLUS loans first disbursed on or after July 1, 1994, but prior to July 1, 1998—the interest rate may not exceed 9 percent: The interest rate for the period from July 1, 2001, through June 30, 2002, is 6.56 percent (3.46 percent plus 3.1 percent equals 6.56 percent).

5. FFEL PLUS loans first disbursed on or after July 1, 1998, and before July 1, 2003—the interest rate may not exceed 9 percent: The interest rate for the period from July 1, 2001, through June 30, 2002, is 6.79 percent (3.69 percent plus 3.1 percent equals 6.79 percent).

Interest Rates for FFEL Consolidation Loans

1. FFEL Consolidation loans for which the consolidation loan application was received by the lender on or after November 13, 1997, and before October 1, 1998—the interest rate may not exceed 8.25 percent: The interest rate for the period from July 1, 2001, through June 30, 2002, is 6.79 percent (3.69 percent plus 3.1 percent equals 6.79 percent).

2. If a portion of a Consolidation loan is attributable to a loan made under subpart I of part A of title VII of the Public Health Service Act, the maximum interest rate for that portion of a Consolidation loan is determined annually, for each 12-month period beginning on July 1 and ending on June 30. The interest rate equals the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending prior to July 1, plus 3 percent. For the quarter ending prior to July 1, 2001, the average 91-day

Treasury bill rate was 3.77 percent. The maximum interest rate for the period from July 1, 2001, through June 30, 2002, is 6.77 percent (3.77 percent plus 3.0 percent equals 6.77 percent).

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following sites: http://www.ed.gov/legislation/FedRegister http://ifap.ed.gov/IFAPWebApp/index.jsp

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 1077a and 20 U.S.C. 1087e.

Dated: September 10, 2001.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

[FR Doc. 01–23040 Filed 9–12–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of interest rates for the William D. Ford Federal Direct Loan Program for the period from July 1, 2001 through June 30, 2002.

SUMMARY: The Chief Operating Officer for Student Financial Assistance announces the interest rates for loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program for the period from July 1, 2001 through June 30, 2002.

SUPPLEMENTARY INFORMATION:

Section 455(b) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1087e(b), provides formulas for determining the interest rates charged to borrowers of loans made under the Direct Loan Program including Federal Direct Stafford Loans (Direct Subsidized Loans), Federal Direct Unsubsidized Stafford Loans (Direct Unsubsidized Loans), Federal Direct PLUS Loans (Direct PLUS Loans) and Federal Direct Consolidation Loans (Direct Consolidation Loans).

The Direct Loan Program includes loans with variable interest rates and loans with fixed interest rates. Most loans made under the Direct Loan Program have variable interest rates that change each year. The variable interest rate formula that applies to a particular loan depends on the date of the first disbursement of the loan. The variable rates are determined annually and are effective for each 12-month period beginning July 1 of one year and ending June 30 of the following year.

In the case of some Direct Consolidation Loans, the interest rate is determined by the date on which the Direct Consolidation Loan application was received. Direct Consolidation Loans for which the application was received on or after February 1, 1999 have a fixed interest rate based on the weighted average of the loans that are consolidated rounded up to the nearest higher ⅛ of one percent.

Pursuant to section 455(b) of the HEA, 20 U.S.C. 1087e(b) the Direct Loan interest rate formulas use the bond equivalent rates of the 91-day Treasury bills at the final auction held before June 1 of each year plus a statutory add-on percentage to determine the variable interest rate for—

- All Direct Subsidized Loans and Direct Unsubsidized Loans;
- Direct Consolidation Loans for which the application was received on or after July 1, 1998 and before February 1, 1999; and
- Direct PLUS Loans disbursed on or after July 1, 1998.

The bond equivalent rate of the 91-day Treasury bills auctioned on May 29, 2001, which is used to calculate the interest rates on these loans is 3.688 percent (rounded to 3.69 percent).

In addition, pursuant to section 455(b) of the HEA, 20 U.S.C. 1087e(b), as amended by Public Law 106–554, the Consolidated Appropriations Act 2001, the interest rate for Direct PLUS Loans that were disbursed on or after July 1, 1994 and on or before July 1, 1998, is calculated based on the weekly average of a 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26 plus a statutory add-on percentage.

The last calendar week ending on or before June 26 2001, was June 22, 2001. On that date, the Board of Governors of the Federal Reserve System published the 1-year constant maturity Treasury yield average as 3.46 percent.

Below is specific information on the calculation of the interest rates for the Direct Loan Program. This information is listed in order by the date a loan was first disbursed or by the date that the Consolidation Application was received.

In addition, a summary of the interest rates that are effective for the period July 1, 2001 through June 30, 2002, is included on charts at the end of this notice. These charts are organized by loan type. In each chart, the interest rates are arranged by the date a loan was first disbursed or by the date that the consolidation application was received.

FOR FURTHER INFORMATION CONTACT: Don Watson, U.S. Department of Education, Room 3045, ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202–5400. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

For Direct Loan Program Loans Disbursed On Or After July 1, 1994, and Before July 1, 1998

The interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. However, for loans disbursed on or after July 1, 1995, and before July 1, 1998, during in school, grace, and deferment periods, the interest rate is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.5 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2001, to June 30, 2002, the interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans and Direct Subsidized and Unsubsidized Consolidation Loans that were disbursed on or after July 1, 1994, and before July 1, 1998, is 6.19 percent during in-school, grace, and deferment periods and 6.79 percent during all other periods.

The interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans is the weekly average of a 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26 plus 3.1 percent. However, these interest rates may not exceed 9.0 percent during any period. From July 1, 2001, to June 30, 2002, the interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans that were disbursed on or after July 1, 1995 and before July 1, 1998, is 6.56 percent.

For Direct Loans Disbursed On Or After July 1, 1998, and Before October 1, 1998

The interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.3 percent. During in-school, grace, and deferment periods, the interest rate formula is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 1.7 percent. However, these interest rates may not exceed 8.25 percent during any period. From July 1, 2001, to June 30, 2002, the interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans that were disbursed on or after July 1, 1998 and before October 1, 1998, is 5.39 percent during in-school, grace, and deferment periods and 5.99 percent during all other periods.

The interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. However, these interest rates may not exceed 9.0 percent during any period. From July 1, 2001, to June 30, 2002, the interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans that were disbursed on or after July 1, 1998, and before October 1, 1998, is 6.79 percent.

For Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans Disbursed On Or After October 1, 1998, and Before July 1, 2003

The interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.3 percent. During in-school, grace, and deferment periods, the interest rate is the bond equivalent rate of the 91-day Treasury bills plus 1.7 percent. However, these interest rates may not exceed 8.25 percent during any period. From July 1, 2001, to June 30, 2002, the interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans that were disbursed after July 1, 1998 is 5.39 percent during in-school, grace, and deferment periods and 5.99 percent during all other periods.

The interest rate for Direct PLUS Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. However, these interest rates may not exceed 9.0 percent during any period. From July 1, 2001, to June 30, 2002, the interest rate for Direct PLUS Loans that were disbursed after July 1, 1998, is 6.79 percent.

For Direct Consolidation Loans For Which The Application Was Received On Or After October 1, 1998, and Before February 1, 1999

The interest rate for Direct Consolidation Loans for which the application was received during this period is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.3 percent. However, these interest rates may not exceed 8.25 percent during any period. From July 1, 2001, to June 30, 2002, the interest rate for Direct Consolidation Loans for which the application was received on or after October 1, 1998 and before February 1, 1999, these loans is 5.99 percent.

For Direct Consolidation Loans For Which The Application Was Received On Or After February 1, 1999, and Before July 1, 2003

The interest rate for Direct Consolidation Loan for which the application was received on or after February 1, 1999, and before July 1, 2003, is the lesser of 8.25 percent, or the weighted average of the loans consolidated, rounded to the nearest higher ⅛ of one percent.

Electronic Access to This Document

You may review this document, as published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://www.ed.gov/legislation/FedRegister
http://ifap.ed.gov/IFAPWebApp/index.jsp

To use the PDF, you must have Adobe Acrobat Reader, which is available free at the first of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.268 William D. Ford Federal Direct Loan Program)

Program Authority: 20 U.S.C. 1087 *et seq.*

Dated: September 10, 2001.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

BILLING CODE 4000–01–P

Direct Loan Program's Interest Rates from July 1, 2001 to June 30, 2002

Federal Direct Subsidized Loans and Federal Direct Unsubsidized Loans

Date the loan was first disbursed between:	Status	Treasury Instrument	Add-on	Interest Rate for 7/1/2001 to 6/30/2002	Maximum Interest Rate
7/1/1994 and 6/30/1995	All periods	91-day T-bill 3.69	+ 3.1 =	6.79	8.25
7/1/1995 and 6/30/1998	In school, grace, deferment	91-day T-bill 3.69	2.5	6.19	8.25
	All others periods		3.1	6.79	
7/1/1998 and 6/30/2003	In school, grace, deferment	91-day T-bill 3.69	1.7	5.39	8.25
	All others periods		2.3	5.99	

Direct Loan Program's Interest Rates from July 1, 2001 to June 30, 2002

Federal Direct PLUS Loans

Date the loan was first disbursed between:	Status	Treasury Instrument	Add-on	Interest Rate for 7/1/2001 to 6/30/2002	Maximum Interest Rate
7/1/1994 and 6/30/1998	All periods	1-year constant maturity Treasury yield 3.46	+ 3.1 =	6.56	9.00
7/1/1998 and 6/30/2003	All periods	91-day T-bill 3.69	+ 3.1 =	6.79	9.00

Direct Loan Program's Interest Rates from July 1, 2001 to June 30, 2002

Federal Direct Subsidized and Unsubsidized Consolidation Loans

Date the loan was first disbursed between:	Status	Treasury Instrument	Add-on	Interest Rate for 7/1/2001 to 6/30/2002	Maximum Interest Rate
7/1/1994 and 6/30/1995	In school, grace, deferment	91-day T-bill	+ 3.1 =	6.79	8.25
	All other periods	3.69			
7/1/1995 and 6/30/1998	In school, grace, deferment	91-day T-bill	+ 2.5 =	6.19	8.25
	All other periods	3.69	+ 3.1 =	6.79	8.25
Applications received between:	Status	Treasury Instrument	Add-on	Interest Rate for 7/1/2001 to 6/30/2002	Maximum Interest Rate
7/1/1998 and 9/30/1998	In school, grace, deferment	91-day T-bill	+ 1.7 =	5.39	8.25
	All other periods	3.69	+ 2.3 =	5.99	8.25
10/1/1998 and 1/31/1999	In school, grace, deferment	91-day T-bill	+ 2.3 =	5.99	8.25
	All other periods	3.69			
2/1/1999 and 6/30/2003	All periods	The lesser of 8.25 percent or weighted average of the loans consolidated, rounded to the next higher 1/8 of one percent.			8.25

Direct Loan Program's Interest Rates from July 1, 2001 to June 30, 2002

Federal Direct PLUS Consolidation Loans

Date the loan was first disbursed between:	Status	Treasury Instrument	Add-on	Interest Rate for 7/1/2001 to 6/30/2002	Maximum Interest Rate
7/1/1994 and 6/30/1998	All periods	1-year constant maturity Treasury yield 3.46	+ 3.1 =	6.56	9.00
Applications received between:	**Status**	**Treasury Instrument**	**Add-on**	**Interest Rate for 7/1/2001 to 6/30/2002**	**Maximum Interest Rate**
7/1/1998 and 9/30/1998	All periods	91-day T-bill 3.69	+ 3.1 =	6.79	9.00
10/1/1998 and 1/31/1999	All periods	91-day T-bill 3.69	+ 2.3 =	5.99	8.25
2/1/1999 and 6/30/2003	All periods	The lesser of 8.25 percent or weighted average of the loans consolidated, rounded to the next higher 1/8 of one percent.			8.25

[FR Doc. 01–23041 Filed 9–12–01; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

Idaho Operations Office

Notice of Availability of Solicitation for Awards of Financial Assistance

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of Availability of Solicitation Number DE–PS07–02ID14200 Nuclear Engineering Education Research (NEER) Program.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, is soliciting applications for research and development grant awards in nuclear engineering topics. It is anticipated that on September 12, 2001, a full text for Solicitation Number DE–PS07–02ID14200 for the 2002 NEER Program will be made available at the Industry Interactive Procurement System (IIPS) Website at: *http://e-center.doe.gov:* The deadline for receipt of applications will be on November 1, 2001. Applications are to be submitted via the IIPS Website. Directions on how to apply and submit applications are detailed under the solicitation on the Website.

FOR FURTHER INFORMATION CONTACT: Dallas Hoffer, Contracting Officer at *hofferdl@id.doe.gov.*

SUPPLEMENTARY INFORMATION: The solicitation will be issued in accordance with 10 CFR Part 600.6(b), eligibility for awards under this program will be restricted to U.S. colleges and universities with nuclear engineering degree programs or options or an operating research reactor, because the purpose of the Nuclear Engineering Education Research (NEER) program is to (1) support basic research in nuclear engineering; (2) assist in developing nuclear engineering students; and (3) contribute to strengthening the academic community's nuclear engineering infrastructure.

The statutory authority for this program is Public Law 95–91.

Issued in Idaho Falls on September 5, 2001.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 01–22971 Filed 9–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Wednesday, September 26, 2001; 1 p.m.–8:30 p.m.

ADDRESSES: Cities of Gold Hotel, Conference Room, Pojoaque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone (505) 989–1662; fax (505) 989–1752 or e-mail: *adubois@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative agenda:

1:00–4:30 p.m.

Board Business.

Election of Officers.

Consideration of 2002 FY Budget.

Openness Plan.

Recruitment/Membership.

4:30–6:00 p.m.—Dinner Break.

6:00–8:30 p.m.—Environmental Restoration and Waste Management Presentations.

Other Board business will be conducted as necessary

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting. This federal register notice is being published less than 15 days prior to the meeting due to programmatic issues that had to be resolved prior to the meeting date. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1640 Old Pecos Trail, Suite H, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http:www.nnmcab.org.*

Issued at Washington, DC on September 7, 2001.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 01–22970 Filed 9–12–01; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management; Announcement of Extension of Public Comment Period; Possible Recommendation of Yucca Mountain for Development as a Geologic Repository

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of extension of public comment period; correction of an address for a hearing.

SUMMARY: The Department of Energy (the Department) announces the extension by 15 days of the public comment period concerning consideration of Yucca Mountain as a potential site for a geologic repository. The comment period, which was to end on September 20, 2001, will be extended to end on October 5, 2001. The Department also wishes to correct the address of a hearing in Amargosa Valley, Nevada.

DATES: Written comments must be received by October 5, 2001. DOE will consider comments after October 5, 2001 to the extent practicable. DOE requests one copy of the written comments.

ADDRESSES: Written comments should be addressed to Carol Hanlon, U.S. Department of Energy, Yucca Mountain Site Characterization Office, (M/S #025), P.O. Box 30307, North Las Vegas, Nevada 89036–0307. The Department also wishes to correct the address of a

September 12, 2001, hearing in Amargosa Valley, Nevada. The correct address is: Longstreet Inn and Casino, Highway 373, Amargosa Valley, Nevada 89020.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, (M/S #025), P.O. Box 30307, North Las Vegas, Nevada 89036–0307, 1–800–967–3477.

SUPPLEMENTARY INFORMATION: On May 7, 2001, the Department announced in the **Federal Register** (66 FR 23013–23016) the initiation of a public comment period on the Secretary's consideration of the Yucca Mountain site for recommendation as a spent nuclear fuel and high-level radioactive waste repository. In conjunction with the initiation of the comment period, the Department issued a report, the Yucca Mountain Science and Engineering Report (YMS&ER), summarizing the scientific and technical information compiled by the Department to date outlining the preliminary design and performance attributes of a potential geologic repository at the Yucca Mountain site. On August 21, 2001, the Department announced in the **Federal Register** (66 FR 43850–43851) the issuance of another report, the Preliminary Site Suitability Evaluation (PSSE). Each of these documents is intended to inform the public and facilitate public review and comment on a possible site recommendation. Also, in the August 21, 2001, **Federal Register** Notice the Department announced that the comment period would close on September 20, 2001. That comment period is now extended 15 days to October 5, 2001.

Issued in Washington, D.C. on September 10, 2001.

James H. Carlson,

Acting Director Office of Civilian Radioactive Waste Management.

[FR Doc. 01–23037 Filed 9–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $6,672,934, plus accrued interest, in refined petroleum product overcharges obtained by the DOE pursuant to a remedial order OHA issued to Hudson Oil Company, Inc., Case No. VEF–0011. The OHA has determined that the funds will be distributed in accordance with the provisions of 10 CFR part 205, Subpart V.

DATE AND ADDRESS: Applications for Refund should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0107. All comments should conspicuously display a reference to Case No. VEF–0011.

FOR FURTHER INFORMATION CONTACT: Richard A. Cronin, Jr., Assistant Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, DC 20585–0107, (202) 287–1562, *richard.cronin@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute to eligible claimants $6,672,934, plus accrued interest, obtained by the DOE pursuant to a Remedial Order OHA issued to Hudson Oil Company, Inc. (Hudson) and Hudson Refining Company, Inc. (Hudson Refining), on March 15, 1985. Under the Remedial Order, Hudson and Hudson Refining were found to have violated the federal petroleum price regulations involving the sale of refined petroleum products during the relevant audit periods.

The OHA will distribute the Remedial Order funds in a refund proceeding described in the Decision and Order. Purchasers of motor gasoline from Hudson, Hudson Refining or its affiliated firms will have the opportunity to submit refund applications. Refunds will be granted to applicants who satisfactorily demonstrate that they were injured by the pricing violations and who document the volume of refined petroleum products they purchased from one of the Hudson-affiliated firms during the relevant audit period.

All applications must be postmarked by November 30, 2001. All applications received in this proceeding will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal Holidays, in Room 7132 (the public reference room), 950 L'Enfant Plaza, Washington, DC.

Dated: September 6, 2001.

George Breznay,

Director, Office of Hearings and Appeals.

Department of Energy, Washington, DC 20585,

September 6, 2001.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Hudson Oil Company, Inc.
Date of Filing: March 20, 1995.
Case Number: VEF–0011.

On March 20, 1995, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds received pursuant to an OHA Remedial Order issued to Hudson Oil Company, Inc. (Hudson) and Hudson Refining Company, Inc. (Hudson Refining). *See Hudson Oil Company, Inc.,* 12 DOE ¶ 83,035 (1985). In accordance with the provisions of the procedural regulations at 10 CFR part 205, Subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations set forth in the Remedial Order.

I. Background

ERA audits of Hudson, a retailer with headquarters in Kansas City, Kansas and Hudson Refining, a refiner located in Cushing, Oklahoma, revealed possible violations of the Mandatory Petroleum Price Regulations in Hudson's sales of gasoline during the period of price controls.[1] Subsequently, ERA issued a proposed remedial order (PRO) alleging that Hudson and its affiliated firms had violated the petroleum price regulations. Hudson challenged the PRO before OHA. In our March 15, 1985 Remedial Order, we found that Hudson had violated the price regulations and had overcharged its motor gasoline customers by $10,670,000 during the period June 1979 through August 1979 (refund period). *See Hudson,* 12 DOE at 86,479. Hudson and its affiliates were found to be jointly and severally liable for the overcharge amount.[2] Id. at 86,481. On March 20, 1995, the Office of General Counsel filed a Petition for the Implementation of Special Refund Proceeding for the $6,672,934 in funds Hudson has remitted to the DOE.[3]

[1] Hudson and its affiliates operated a widespread retail operation. While information in the available files is incomplete, Hudson gasoline may have been sold by retailers in Virginia, Florida, Pennsylvania, Maryland, New York, West Virginia and Georgia.

[2] The Remedial Order references Hudson Van Oil Company, Hudson Van Oil Company of Kansas City, Inc., Hudson Van Oil Company of Florida, Inc., Hudson Van Oil Company of California, Inc., Hudson Stations, Inc., Wind Stations, Inc., News, Inc. and Hudson Petroleum, Inc. as Hudson affiliates covered in ERA's PRO. *See Hudson,* 12 DOE at 86,483 n.1.

[3] Hudson and Hudson Refining filed for bankruptcy in 1984. In addition to the March 1985

Continued

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (Vickers).

On July 5, 2001, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Consent Order funds. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 66 FR 36764 (July 13, 2001). More than 30 days have elapsed and OHA has received no comments concerning these proposed refund procedures. Consequently, the procedures will be adopted as proposed except for the deadline to submit applications for refund. The deadline will be extended to November 30, 2001.

III. Refund Procedures

A. Standards for the Evaluation of Claims

This section sets forth the standards to be used in evaluating refund claims in the Hudson refund proceeding. From our experience with Subpart V proceedings, we expect that refund applicants will fall into the following categories: (i) End-users; (ii) regulated entities, such as public utilities and cooperatives; (iii) refiners, resellers and retailers (collectively referred to as ''resellers'') and (iv) consignees.

In order to receive a refund, each claimant will be required to submit a schedule of its gasoline purchases from Hudson during the refund period. If the gasoline was not purchased directly from Hudson, the claimant must establish that the gasoline originated from Hudson.[4]

In addition, a reseller, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Hudson's regulatory violations. This showing will consist of two distinct elements. First, a reseller claimant will be required to show, through credible, firm-specific data, that it had ''banks'' of unrecouped increased product costs beginning in June 1979 through August 1979. In addition, such a claimant must demonstrate that market conditions would not have allowed those costs to be passed through to its customers. This showing may be made in a comparative disadvantage analysis, which compares the price paid by the applicant with the average price paid for the same product at the relevant level of distribution. *See, e.g., Enron Corp./MAPCO, Inc.,* 27 DOE ¶ 85,018 (1998).

A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the overcharges, or is eligible for a refund of less than the applicable presumption-level amount, will not then be eligible for a presumption-based refund. Instead, such a claimant will receive a refund which reflects the level of injury established in its Application. No refund will be approved if its submission indicates that it was not injured as a result of its gasoline purchases from Hudson.

1. Presumptions for Claims Based Upon Hudson Gasoline Purchases

Our general practice is to grant refund on a pro-rata or volumetric basis. In order to calculate the volumetric refund amount, the OHA divides the amount of money available for direct restitution by the number of gallons sold by the firm during the period covered by the consent order.

Based on the available ERA workpapers, we estimate that during the period June 1979 through August 1979 Hudson sold 80,207,000 gallons of gasoline. See Schedule II–Q–Summary of allowable cost recoveries at 3. Dividing the recovered overcharge amount of $6,672,934 by this estimated number of gallons sold by Hudson results in a volumetric refund amount (or allocable share) of $0.0832 per gallon. In addition, each successful applicant is entitled to receive a proportionate share of accrued interest.[5]

In order to expedite the processing of applications in this proceeding and to ensure that refund claims are evaluated in the most efficient and equitable manner possible, we will use the following presumptions in addition to the volumetric presumption described above.

a. End-Users

End-users of Hudson gasoline, i.e., consumers, whose use of the gasoline was unrelated to the petroleum business are presumed injured and need only document their purchase volumes from Hudson during the refund period to be eligible to receive a full allocable share.

b. Refiners, Resellers and Retailers Seeking Refunds of $10,000 or Less

Any reseller claimant whose allocable share is $10,000 or less, i.e. who purchased 120,192 gallons or less of Hudson gasoline during the refund period will be presumed injured and therefore need not provide a further demonstration of injury, besides documentation of its volumes, to receive its full allocable share.

c. Medium-Range Refiners, Reseller and Retailer Claimants

In lieu of making a detailed showing of injury, a reseller claimant whose allocable share exceeds $10,000 may elect to receive as its refund the larger of $10,000 or 40 percent of its allocable share up to $50,000.[6] An applicant in this group will only be required to provide documentation of its purchase volumes of Hudson gasoline during the refund period in order to receive a refund of 40 percent of its total volumetric share, or $10,000, whichever is greater.

d. Regulated Firms and Cooperatives

We have determined that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement, needs only to submit documentation of Hudson gasoline used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or cooperative whose allocable share is greater that $10,000 will also be required to certify that it will pass through any refund received to its customers or member-customers, provide us with a full explanation of how it plans to accomplish that restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund.

e. Spot Purchasers

We will establish a rebuttable presumption that a reseller that made only irregular or sporadic, i.e., spot, gasoline purchases from Hudson did not suffer injury as a result of those purchases. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases of Hudson gasoline. In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not sufficiently recouped through draw down of banks. See Texaco, 20 DOE at 88,320–21.

f. Consignees

Finally, as in previous cases, we will presume that consignees of Hudson gasoline,

---

Remedial Order discussed above OHA issued another Remedial Order to Hudson on July 1, 1985, finding that Hudson had violated the price regulations concerning sales of crude oil and was liable for overcharges of $6,380,506. *See Hudson Oil Company,* 13 DOE ¶ 83,022 (1985). ERA's petition requests that we institute a refund proceeding covering both Remedial Orders. However, since Hudson has failed to remit sufficient money to fully comply with the March 1985 Remedial Order, and this Remedial Order was first in time, we will institute a refund proceeding that covers only Hudson's violation of price regulations concerning its sales of motor gasoline detailed in the March 1985 Remedial Order.

[4] Indirect purchasers who establish that their gasoline purchases originated with Hudson will be eligible for a refund unless the direct purchaser has filed a refund claim and established that it did not pass through the Hudson overcharges to its customers. See Texaco, 20 DOE ¶ 85,147 at 88,319 n.39 (1990)(Texaco). As a result, applications from indirect purchasers will generally be considered only after evalauting the applications of their suppliers.

[5] The minimum refund amount that will be paid to a claimant is $15.00. We have found through our experience that the cost of processing claims for less than $15.00 outweighs the benefits of restitution in these cases. *See, e.g., Texaco*, 20 DOE at 88,320 n. 43.

[6] That is, claimants who purchased between 120,192 gallons and 1,502,404 gallons of Hudson gasoline during the refund period may elect to utilize the presumption. Claimants who purchased more than 1,502,404 gallons from Hudson may elect to limit their claims to $50,000.

if any exist, were not injured by the Hudson overcharges. *See Atlantic Richfield Company,* 17 DOE ¶ 85,069 at 88,153 (1988). A consignee agent is an entity that distributed its products pursuant to an agreement whereby its supplier established the prices to be paid and charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products distributed. This presumption may be rebutted by showing that the consignee's sales volumes and corresponding commission declined due to the alleged uncompetitiveness of Hudson's gasoline pricing practices. *See Gulf Oil Corporation/C.F. Canter Oil Company,* 13 DOE ¶ 85,388 at 88,962 (1986).

B. Refund Application Requirements

To apply for a refund from the Hudson monies paid to the DOE, a claimant should submit an Application for Refund containing the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for additional information, and the name and address of the person who should receive any refund check.[7]

(2) A monthly purchase schedule covering the refund period. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its Hudson gasoline purchases, but the estimation method must be reasonable and must be explained;

(3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Hudson refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(4) If the applicant is or was in any way affiliated with Hudson, it should explain this affiliation, including the time period in which it was affiliated;[8]

(5) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled with Hudson Oil Company, Inc. and Case No. VEF–0011. Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for that information to be publicly disclosed, it must submit an original application, clearly designated ''confidential,'' containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked on or before November 30, 2001,[9] and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

We will adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by ''representatives,'' including refund filing services, consulting firms, accountants, and attorneys. *See, e.g., Texaco; Starks Shell Service,* 23 DOE ¶ 85,017 (1993); *Shell Oil Co.,* 18 DOE ¶ 85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant. The OHA reiterates its policy to scrutinize applications filed by filing services closely. Applications submitted by a filing service should contain all of the information indicated above.

Additionally, the OHA reserves the authority to require additional information to be submitted before granting any particular refund in the Hudson proceeding.

C. Impact of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA) Amendments on Hudson Refund Claims

The Interior and Related Agencies Appropriations Act for FY 1999 amended certain provisions of the Petroleum Overcharge and Distribution and Restitution Act of 1986 (PODRA). These amendments extinguished rights that refund applicants had under PODRA to refunds for overcharges on the purchases of refined petroleum products. They also identified and appropriated a substantial portion of the funds being held by the DOE to pay refund claims (including the funds paid by Hudson). Congress specified that these funds were to be used to fund other DOE programs. As a result, the petroleum overcharge escrow accounts in the refined product area contain substantially less money than before. In fact they may not contain sufficient funds to pay in full all pending and future refund claims (including those in litigation) if they should all be found to be meritorious. *See Enron Corp./Shelia S. Brown,* 27 DOE ¶ 85,036 at 88,244 (2000) (Brown). Congress directed OHA to ''assure the amount remaining in escrow to satisfy refined petroleum product claims for direct restitution is allocated equitably among all claimants.'' *Omnibus Consolidated and Emergency Supplemental Appropriation Act, 1999,* Pub. L. No. 105–277 § 337, 112 Stat 2681, 2681–295 (1998) (language added to PODRA); *Brown,* 27 DOE at 88,244. In view of this Congressional directive and the limited amount of funds available, it may become necessary to prorate the funds available among the meritorious Hudson claims. However, it could be several years before we know the full value of the meritorious claims and the precise total amount available for distribution. It will be some time before we are able to determine the amount that is available for distribution for each claimant.

In light of the considerations described above, we will pay successful claimants using the following mechanism. All successful small claimants (refunds under $10,000) will be paid in full. To require small claimants to wait several more years for their refunds would constitute an inordinate burden and would be inequitable. *See Brown,* 27 DOE at 88,244. For all others granted refunds, including reseller claimants who have elected to take presumption refunds, we will immediately pay the larger of $10,000 or 50 percent of the refund granted. Once the other pending refund claims have been resolved, the remainder of the Hudson claims will be paid to the extent that it is possible through an equitable distribution of the funds remaining in the petroleum overcharge escrow account.

It Is Therefore Ordered That:

(1) The payments remitted to the Department of Energy by Hudson Oil Company, Inc., pursuant to the remedial order issued on March 15, 1985, will be distributed in accordance with the forgoing Decision.

(2) Applications for Refund in the Hudson Oil Company, Inc. Refund Proceeding, Case No. VEF–0011, must be postmarked no later than November 30, 2001.

---

[7] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the regulations codified at 10 CFR part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[8] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of Hudson were not injured by the firm's overcharges. *See, e.g., Marathon Petroleum Co./EMRO Propane Co.,* 15 DOE ¶ 85,288 (1987). This is because Hudson presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. *See Marathon Petroleum Co./Pilot Oil Corp.,* 16 DOE ¶ 85,611 (1987), *amended claim denied,* 17 DOE ¶ 85,291 (1988), *reconsideration denied,* 20 DOE ¶ 85,236 (1990). Furthermore, if an affiliate of Hudson were granted a refund, Hudson would be indirectly compensated from a remedial order fund remitted to settle its own alleged violations.

[9] We originally proposed a deadline of October 31, 2001. Given the date of our final decision establishing the Hudson refund proceeding, we will extend this deadline to November 30, 2001.

Dated: September 6, 2001.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 01–22974 Filed 9–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $528,941, plus accrued interest, in crude oil and refined petroleum product overcharges obtained by the DOE pursuant to consent orders signed by Intercoastal Oil Corporation, Case No. LEF–0057, and Gulf States Oil & Refining, Case No. LEF–0073. The OHA has determined that the funds will be distributed in accordance with the provisions of 10 CFR part 205, subpart V and DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases.

DATE AND ADDRESS: Applications for Refund should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585–0107. All applications should display a reference to Case Nos. LEF–0057 or LEF–0073.

FOR FURTHER INFORMATION CONTACT: Richard A. Cronin, Jr. Assistant Director Office of Hearings and Appeals 1000 Independence Ave., SW. Washington, DC 20585–0107 (202) 287–1562 *richard.cronin@hq.doe.gov*

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute to eligible claimants $528,941, plus accrued interest, obtained by the DOE pursuant to Consent Orders entered into with Intercoastal Oil Corporation (Intercoastal) and Gulf States Oil & Refining (Gulf States). Under the Consent Orders, Intercoastal and Gulf States resolved all allegations concerning violations of the federal petroleum price regulations involving the sale of refined petroleum products and crude oil during the relevant audit periods.

The OHA will distribute one-half of the Consent Order funds in a refund proceeding described in the Decision and Order to provide restitution for those parties injured by Intercoastal's or Gulf States' alleged violations of pricing regulations for refined petroleum products. Purchasers of refined petroleum products from Intercoastal or Gulf States will have the opportunity to submit refund applications. Refunds will be granted to applicants who satisfactorily demonstrate that they were injured by the pricing violations and who document the volume of refined petroleum products they purchased from one of the firms during the relevant consent order period.

The remaining one-half of the Consent Order funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases. Because the deadline for filing crude oil refund applications has passed, no new applications for refund for the alleged crude oil pricing violations of Intercoastal and Gulf States will be accepted for these funds.

Applications should be postmarked by November 30, 2001. Applications so received will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal Holidays, in Room 7132 (the public reference room), 950 L'Enfant Plaza, Washington, DC

Dated: September 6, 2001.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy, Washington, DC 20585

September 6, 2001.

Decision and Order, Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Intercoastal Oil Corporation, Gulf States Oil & Refining.

Dates of Filing: July 20, 1993, July 20, 1993.

Case Numbers: LEF–0057, LEF–0073.

The Office of General Counsel (OGC) of the Department of Energy (DOE) filed a Petition requesting that the Office of Hearings and Appeals (OHA) formulate and implement Subpart V special refund proceedings. Under the procedural regulations of the DOE, special refund proceedings may be implemented to refund monies to persons injured by violations of the DOE petroleum price regulations, provided DOE is unable to readily identify such persons or to ascertain the amount of any refund. 10 CFR § 205.280. We have considered OGC's request to formulate refund procedures for the disbursement of monies remitted by Intercoastal Oil Corporation (Intercoastal) and Gulf States Oil & Refining (Gulf States) pursuant to Consent Orders (the Consent Orders) the firms have entered into with the DOE and have determined that such procedures are appropriate.

Under the terms of the Consent Orders, a total of $528,941 has been remitted to DOE to remedy pricing violations which occurred during the relevant audit periods.[1] These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution. This Decision sets forth OHA's plan to distribute those funds. The specific application requirements appear in Section III of this Decision.

I. Background

Gulf States, a firm with its home office in Houston, Texas, was a refiner during the period of price controls, August 13, 1973 through January 27, 1981. During this period, Intercoastal, a California corporation, was a reseller of crude oil and refined petroleum products. Economic Regulatory Administration audits of Intercoastal and Gulf States revealed possible violations of the Mandatory Petroleum Price Regulations (MPPR). Subsequently, each firm entered into a Consent Order to settle its disputes with the DOE concerning sales of crude oil and refined petroleum products. Pursuant to these Consent Orders, the firms agreed to pay to the DOE specified amounts in settlement of their potential liability with respect to sales to their customers during the settlement periods. The settlement period referenced in the Intercoastal Consent Order is the period October 25, 1973 through January 17, 1981.[2] For the Gulf States Consent Order the settlement period is August 19, 1973 through January 27, 1981.

II. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR part 205, Subpart V. These procedures apply in situations where the DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On July 16, 2001, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Consent Order funds. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. *See* 66 FR 38670 (July

[1] Pursuant to the Consent Orders, Gulf States remitted $500,000 to DOE and Intercoastal has remitted $28,941.

[2] The Intercoastal Consent Order resolves all possible violations of the petroleum price regulations for the period August 19, 1973 through January 27, 1981. However, the consent order goes on to state that Intercoastal was active as a reseller of crude oil and refined petroleum products from October 25, 1973 through January 27, 1981. *See Consent Order with Intercoastal Oil Corporation*, Case No. HRO–0083 (January 25, 1983) at ¶ 301.

25, 2001). More than 30 days have elapsed and OHA has received no comments concerning these proposed refund procedures. Consequently, the procedures will be adopted as proposed.

III. Refund Procedures

A. Allocation of Consent Order Funds

Both firms sold crude oil and refined petroleum products. We have been unable to discover factual information concerning the actual amounts of the alleged pricing violations or the distribution of the violations between either firm's sales of crude oil and refined petroleum products. Under the circumstances, i.e., with no factual basis for a decision as to allocation of the consent order funds between crude oil and refined products, one-half of the Intercoastal and Gulf States consent order funds ($264,471 total plus accrued interest) be allocated for restitution for parties injured by Intercoastal's and Gulf States' alleged violations of the pricing regulations for crude oil. The remaining portion of each of the sums remitted by Intercoastal and Gulf States ($264,470 total plus interest) will be allocated for restitution for those parties injured by the firms' alleged violations of the pricing regulations for refined petroleum products.

B. Refined Petroleum Product Refund Procedures

1. Application Requirements

In cases where the ERA is unable to identify parties injured by the alleged overcharges or the specific amounts to which they may be entitled, we normally implement a two-stage refund procedure. In the first stage, those who bought refined petroleum products from the consenting firms may apply for refunds, which are typically calculated on a pro-rata or volumetric basis. In order to calculate the volumetric refund amount, the OHA divides the amount of money available for direct restitution by the number of gallons sold by the firm during the period covered by the consent order.

In the present case, however, we lack much of the information that we normally use to provide direct restitution to injured customers of the consenting firms. In particular, we have been unable to obtain any information on the volumes of the relevant petroleum products sold by the consenting firms during the settlement period. Nor do we have any information concerning the customers of these firms. Based on the present state of the record in these cases, it would be difficult to implement a volumetric refund process. Nevertheless, we will accept any refund claims submitted by persons who purchased refined petroleum products from Intercoastal or Gulf States during the settlement periods discussed above. We will work with those claimants to develop additional information that would enable us to determine who should receive refunds and in what amounts.[3]

To apply for a refund from the Intercoastal or Gulf States Consent Order funds, a claimant should submit an Application for Refund containing the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for additional information, and the name and address of the person who should receive any refund check.[4]

(2) A monthly gallonage purchase schedule covering the relevant consent order period. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its refined petroleum product purchases, but the estimation method must be reasonable and must be explained;

(3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in that refund proceeding. If so, an explanation of the circumstances of the other filing or authorization must be submitted;

(4) If the applicant is or was in any way affiliated with the consenting firm, it must explain this affiliation, including the time period in which it was affiliated;[5]

(5) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled with the name and case number of the relevant firm (Intercoastal Oil Corporation, Case No. LEF–0057 or Gulf States Oil & Refining, Case No. LEF–0073). Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for that information to be publicly disclosed, it must submit an original application, clearly designated ''confidential,'' containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications must be postmarked by November 30, 2001 and should be sent to the address below:

Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585–0107.

We will adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by ''representatives,'' including refund filing services, consulting firms, accountants, and attorneys. *See, e.g., Starks Shell Service*, 23 DOE ¶ 85,017 (1993); *Texaco Inc.*, 20 DOE ¶ 85,147 (1990) *(Texaco); Shell Oil Co.*, 18 DOE ¶ 85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant. The OHA reiterates its policy to scrutinize applications filed by filing services closely. Applications submitted by a filing service should contain all of the information indicated above.

Finally, the OHA reserves the authority to require additional information from an applicant before granting any refund in these proceedings.

2. Allocation Claims

We may receive claims based upon Intercoastal's or Gulf States's failure to furnish petroleum products that they were obliged to supply under the DOE allocation regulations that became effective in January 1974. *See* 10 CFR part 211. Any such application will be evaluated with reference to the standards set forth in *Texaco* (and cases cited therein). *See Texaco*, 20 DOE at 88,321.

3. Impact of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA) Amendments on Intercoastal and Gulf States Refined Product Refund Claims

The Interior and Related Agencies Appropriations Act for FY 1999 amended certain provisions of the Petroleum Overcharge and Distribution and Restitution Act of 1986 (PODRA). These amendments extinguished rights that refund applicants

[3] Applications for Refund from will be accepted only for refined product pricing violations. With regard to crude oil pricing violations the deadline for filing applications for refund has passed. *See infra.*

[4] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[5] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of a consenting firm were not injured by the firm's overcharges. *See, e.g., Marathon Petroleum Co./EMRO Propane Co.*, 15 DOE ¶ 85,288 (1987). This is because the consenting firm presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. *See Marathon Petroleum Co./Pilot Oil Corp.*, 16 DOE ¶ 85,611 (1987), *amended claim denied*, 17 DOE ¶ 85,291 (1988), *reconsideration denied*, 20 DOE ¶ 85,236 (1990). Furthermore, if an affiliate of the consenting firm were granted a refund, the consenting firm would be indirectly compensated from a Consent Order fund remitted to settle its own alleged violations.

had under PODRA to refunds for overcharges on the purchases of refined petroleum products. They also identified and appropriated a substantial portion of the funds being held by the DOE to pay refund claims (including the funds paid by Intercoastal and Gulf States). Congress specified that these funds were to be used to fund other DOE programs. As a result, the petroleum overcharge escrow accounts in the refined product area contain substantially less money than before. In fact they may not contain sufficient funds to pay in full all pending and future refund claims (including those in litigation) if they should all be found to be meritorious. *See Enron Corp./Shelia S. Brown*, 27 DOE ¶ 85,036 at 88,244 (2000) (*Brown*). Congress directed OHA to ''assure the amount remaining in escrow to satisfy refined petroleum product claims for direct restitution is allocated equitably among all claimants.'' *Omnibus Consolidated and Emergency Supplemental Appropriation Act, 1999*, Pub. L. No. 105–277 § 337, 112 Stat 2681, 2681–295 (1998) (language added to PODRA); *Brown*, 27 DOE at 88,244. In view of this Congressional directive and the limited amount of funds available, it may become necessary to prorate the funds available for the meritorious claimants in the Intercoastal and Gulf States refund proceedings. However, it could be several years before we know the full value of the meritorious claims and the precise total amount available for distribution. It will be some time before we are able to determine the amount that is available for distribution for each claimant.

In light of the above considerations, we will pay successful applicants using the following mechanism. All successful small claimants (refunds under $10,000) will be paid in full. To require small claimants to wait several more years for their refunds would constitute an inordinate burden and would be inequitable. *See Brown*, 27 DOE at 88,244. For all others granted refunds, including reseller claimants who have elected to take presumption refunds, we will immediately pay the larger of $10,000 or 50 percent of the refund granted. Once the other pending refund claims have been resolved, the remainder of the Intercoastal and Gulf States claims will be paid to claimants to the extent that it is possible through an equitable distribution of the funds remaining in the petroleum overcharge escrow account.

C. Refund Procedures for Crude Oil Pricing Violations

With regard to the portion of the consent order funds arising from alleged pricing violations of crude oil ($264,471 plus accrued interest), these funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, (MSRP), *see* 51 FR 27899 (August 4, 1986).[6] Pursuant to the MSRP, OHA will distribute 40 percent of crude oil overcharge funds will be disbursed to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims to injured parties. The MSRP also specified that any funds remaining after all valid claims by injured purchasers are paid will be disbursed to the federal government and the states in equal amounts.

In April 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 Fed. Reg. 11,737 (April 10, 1987) (April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the Subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations would be presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users would not need to submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *See City of Columbus Georgia*, 16 DOE ¶ 85,550 (1987).

1. Individual Refund Claims

The amount of money attributed for restitution of crude oil pricing violations is $264,471 plus accrued interest. In accordance with the MSRP, we shall initially reserve 20 percent of those funds ($52,894 plus accrued interest) for direct refunds to applicants who claim that they were injured by crude oil overcharges. We shall base refunds on a volumetric amount which has been calculated in accordance with the methodology described in the April 10 Notice. That volumetric refund amount is currently $0.0016 per gallon. *See* 57 FR 15562 (March 24, 1995).

The filing deadline for refund applications in the crude oil refund proceeding was June 30, 1994. This was subsequently changed to June 30, 1995. *See* Filing Deadline Notice, 60 FR 19914 (April 20, 1995); *see also* DMLP PDO, 60 FR 32004, 32007 (June 19, 1995). Because the June 30, 1995, deadline for crude oil refund applications has passed, no new applications for restitution from purchasers of refined petroleum products for the alleged crude oil pricing violations of Intercoastal and Gulf States will be accepted for these funds. Instead, these funds will be added to the general crude oil overcharge pool used for direct restitution.

2. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the crude oil violation amounts subject to this Decision, or $211,577 plus accrued interest, should be disbursed in equal shares to the states and federal government, for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount, or $105,788 plus interest, into an interest bearing subaccount for the states, and one-half or $105,789 plus interest, into an interest bearing subaccount for the federal government.

It Is Therefore Ordered That:

(1) The payments remitted to the Department of Energy by Intercoastal Oil Corporation and Gulf States Oil & Refining, pursuant to consent orders signed on January 25, 1983 and February 1, 1983 respectively, will be distributed in accordance with the forgoing Decision.

(2) Applications for Refund in the Intercoastal Oil Corporation Refund Proceeding, Case No. LEF–0057, and the Gulf States Oil and Refining Refund Proceeding, Case No. LEF–0073, must be postmarked no later than November 30, 2001.

Dated: September 6, 2001.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 01–22975 Filed 9–12–01; 8:45 am]

BILLING CODE 6450–01–P

[6] The MSRP was issued as a result of the Settlement Agreement approved by the court in *The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986). Shortly after the issuance of the MSRP, the OHA issued an Order that announced that this policy would be applied in all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29,689 (August 20, 1986) (the August 1986 Order).

DEPARTMENT OF ENERGY

Western Area Power Administration

Casper Creek Crossing, Spence-Thermopolis 230-kV and Alcova-Copper Mountain 115-kV Transmission Lines

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Floodplain Statement of Findings.

SUMMARY: This Floodplain Statement of Findings for the Casper Creek Crossing, Spence-Thermopolis 230-kilovolt (kV) and Alcova-Copper Mountain 115-kV Transmission Lines was prepared in accordance with the U.S. Department of Energy's (DOE) Floodplain/Wetland Review Requirements (10 CFR part 1022). Western Area Power Administration (Western), a power marketing agency of the U.S. Department of Energy (DOE), is the lead Federal agency for a proposal to make repairs and correct erosion problems at the Casper Creek Crossing for the Spence-Thermopolis 230-kV and Alcova-Copper Mountain 115-kV

Transmission Lines. This project is located in Natrona County, Wyoming, approximately 40 miles west of Casper, Wyoming. Western plans to replace an existing culvert crossing at the Casper Creek with a rock filled gabion type structure. Approximately 50 yards downstream, additional rock filled gabion type structures will be placed in the creek. A crossing at Casper Creek is necessary to provide access for transmission line inspection and transmission line maintenance. All proposed work will occur within the floodplain of the Middle Fork Casper Creek.

Western prepared a floodplain assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. This action is categorically excluded under DOE's National Environmental Policy Act (NEPA) Implementing Procedures (10 CFR part 1021). A 15-day public review period will be provided before the action is taken.

DATES: Comments on the floodplain action are due September 28, 2001.

ADDRESSES: Comments should be sent to Mr. Rodney Jones, Environmental Specialist, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003; fax: (970) 461–7213, e-mail rjones@wapa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Jones, at the above address, telephone (970) 461–7371. For further information on DOE Floodplain/Wetlands Environmental Review Requirements, contact: Ms. Carol M. Borgstrom, Director, NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This Statement of Findings for the proposal to make repairs and correct erosion problems at the Casper Creek Crossing for the Spence-Thermopolis 230-kV and Alcova-Copper Mountain 115-kV Transmission Lines was prepared in accordance with 10 CFR part 1022. A notice of floodplain involvement was published in the **Federal Register** (FR) on June 25, 2001 (66 FR 33678). The State of Wyoming, Office of Federal Land Policy, responded to the notice stating that no State agencies brought up concerns to be addressed in the floodplain assessment. The State of Wyoming requested a copy of the floodplain assessment when it was completed.

The Casper Creek Crossing is located at the Middle Fork Casper Creek, in Natrona County, Wyoming, in T.3 N., R. 86 W., Sections 3 and 4. The road used to access and maintain Western's Spence-Thermopolis 230-kV and Alcova-Copper Mountain 115-kV Transmission Lines has been washed out by flows within the Middle Fork Casper Creek. Since construction of the power lines, the culverts at the stream crossings have been washed out and replaced numerous times. After each wash out, it was necessary to move the stream crossings further upstream to avoid the deeply incised stream channel. The proposed project would construct drop structures and a stream crossing that are designed to stabilize the stream channel, dissipate stream flow velocities during peak flow events, minimize erosion, restore stream banks to reasonable slopes, and allow continued access by Western to inspect and maintain its transmission lines.

Drop structures would be placed at two locations on the Middle Fork Casper Creek. The uppermost location will be approximately 350 feet west (upstream) of the transmission line's rights-of-way. A series of three drop structures is anticipated at the uppermost location. The low water crossing, consisting of riprap, will be located immediately upstream of first drop structure. Drop structures will also be placed at or near the original road crossing (downstream) directly below the existing power lines. A series of four drop structures is anticipated at the downstream location.

The drop structures will be constructed of one-quarter inch thick steel plate, rock riprap, gabion wire, silt liner, and steel pipe. Additionally, riprap will be placed upstream and downstream of the drop structures to provide grade stabilization upstream and downstream of the drop structures. The stream banks between the upper and lower drop structures will be contoured and vegetated. Slopes along this stream reach will be cut back to a 2 to 1 slope ratio (2:1) or less. Upon completing the bank contouring, the slopes will be seeded with native vegetation to promote slope stability.

Western considered an alternative to the proposed project that would involve reinstallation of larger culverts at the present crossing site. However, given the past experience with culverts washing out during heavy rain events, this was not considered a long-term solution to the problem. Repeated culvert washouts were contributing to stream bank erosion and stream channel degradation downstream.

Environmental impacts associated with the proposed project are expected to be minimal. Based on the hydrology of the Middle Fork Casper Creek and apparent lack of hydrophytic vegetation and hydric soils, wetlands are not present at the site. Implementation of the proposed project will stabilize the stream channel, dissipate stream flow velocities, stabilize stream banks, and maintain the chemical, physical, and biological integrity of the Middle Fork Casper Creek. Direct and indirect impacts to other resources (*e.g.,* wildlife and air quality) are expected to be negligible as well.

The project is located within the boundaries of a National Register of Historic Places-eligible archaeological site. Through a conversation between the Western Historic Preservation Officer and the Wyoming State Historic Preservation Office (SHPO), Western contracted to perform archaeological testing to determine if this project will have an effect on the eligibility of the site. A field visit indicated that it is unlikely intact buried features are located in the project area. An extensive augering program will be done within the area to be impacted along the creek, as well as along the access road to the east. Western will consult with the SHPO on the findings of this augering program prior to implementation of the project.

The construction of the project would not affect existing flood characteristics. No measurable change in flood stage is anticipated. Construction activities, which will take approximately 14 days to complete, will be scheduled during late summer to early fall, under low flow conditions. The action conforms to all applicable State and local floodplain protection standards.

A small increased risk of pollution could result from having construction equipment working in the floodplain. This includes the risk of accidental oil or fuel spills from malfunctioning equipment. Given the size of equipment involved and the amount of potential spill material, this risk is considered very low. If a spill were to occur it would be minor and could be readily contained and cleaned up.

Dated: September 5, 2001.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 01–22973 Filed 9–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2004 Resource Pool-Loveland Area Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of extension.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), published on May 11, 2001, in the **Federal Register**, a notice announcing the Post-2004 Loveland Area Projects Resource Pool Proposed Allocation of Power.

This notice extends the comment period from September 10, 2001, to close of business October 12, 2001. Western held public information and comment forums on the proposed allocations on August 2, 2001, August 7, 2001, and August 9, 2001. As a result of these meetings, several requests were made to extend the comment period to allow for further review of data for those entities receiving an allocation from two projects. This will also allow those entities to submit more in-depth comments on both projects.

DATES: To be assured of consideration, Western must receive all written comments by close of business October 12, 2001.

ADDRESSES: Send written comments about these proposed allocations to: Mr. Joel K. Bladow, Regional Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003. Comments may also be faxed to 970–461–7213 or e-mailed to *post2004lap@wapa.gov.* All documentation developed or retained by Western in developing the proposed allocations is available for inspection and copying at the Rocky Mountain Customer Service Region Office, at 5555 East Crossroads Boulevard, Loveland, CO 80538–8986.

FOR FURTHER INFORMATION CONTACT: Ron Steinbach, Power Marketing Manager, 970–461–7322; David Holland, Project Manager, 970–461–7505; or Susan Steshyn, Public Utilities Specialist, 970–461–7237. Written requests for information should be sent to Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, faxed to 970–461–7213, or e-mailed to *post2004lap@wapa.gov.*

Dated: September 6, 2001.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 01–22972 Filed 9–12–01; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7055–8]

Agency Information Collection Activities; EPA ICR No. 1669.03; OMB No. 2070–0158; ICR Renewal Submission to OMB; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: Lead-based Paint Pre-Renovation Information Dissemination—TSCA Sec. 406(b) (EPA ICR No. 1669.03; OMB Control No. 2070–0158), has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to 5 CFR 1320.12. The ICR describes the nature of the information collection activity and its expected burden and cost. The **Federal Register** notice announcing the Agency's intent to seek OMB approval for this ICR, which also provided a 60-day comment period, was issued on January 2, 2001 (66 FR 105). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before October 15, 2001.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740 or by e-mail: *farmer.sandy@epa.gov* or access the ICR at *http://www.epa.gov/icr/.* Refer to EPA ICR No. 1669.03 and OMB Control No. 2070–0158.

ADDRESSES: Send your comments, referencing EPA ICR #1669.03, to: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (MC 2822), 1200 Pennsylvania Ave, NW., Washington, DC 20460.

And send a copy of your comments to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Title: Lead-based Paint Pre-Renovation Information Dissemination—TSCA Sec. 406(b) (EPA ICR No. 1669.03; OMB No. 2070–0158). This is a request to extend an existing approval for a collection of information that is currently scheduled to expire on September 30, 2001. Under 5 CFR 1320.10(e)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: This information collection involves third-party notification to owners and occupants of housing that will allow these individuals to avoid exposure to lead-contaminated dust and lead-based paint debris that are sometimes generated during renovations of housing where lead-based paint is present, thereby protecting public health. Since young children are especially susceptible to the hazards of lead, owners and occupants with children can take action to protect their children from lead poisonings. Section 406(b) of the Toxic Substances Control Act (TSCA) requires EPA to promulgate regulations requiring certain persons who perform renovations of target housing for compensation to provide a lead hazard information pamphlet (developed under TSCA section 406(a)) to the owner and occupants of such housing prior to beginning the renovation. Responses to the collection of information are mandatory (see 40 CFR part 745, subpart E). Those who fail to provide the pamphlet as required may be subject to both civil and criminal sanctions.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approved numbers in 40 CFR part 9.

Burden Statement

The annual public reporting burden for this collection of information is estimated to average 0.96 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the collection activity and the estimated burden and costs associated with that collection activity, which are only briefly summarized here:

Respondents/Affected Entities: You may be potentially affected by this action if you perform renovations of certain types of housing, constructed prior to 1978, for compensation. Potentially affected categories and entities may include, but are not limited to: Single family housing construction (223321), Multifamily housing construction (23322), Plumbing, heating, and air-conditioning contractors, Painting and wall covering contractors (23521), Electrical contractors (23531), Masonry and stone contractors (23551), Carpentry contractors (23551), Lessors of residential buildings and dwellings (53111), Offices of real estate agents and brokers (53121), and, Residential property managers (53131). Other types of entities not listed could also be affected.

Frequency of Collection: On occasion.

Estimated burden/cost per response: 0.96 hours

Estimated annual number of potential responses: 3,046,000.

Estimated total annual burden hours: 2,938,546 hours.

Estimated annual capital costs: $9,231,000

Estimated total annual burden costs: $95,464,291.

Changes in Estimates From the Last Approval

The total burden associated with this ICR has increased from 2,331,597 hours in the previous ICR to 2,938,546 hours for this ICR. This adjustment in burden reflects adjustments in disclosure burden, with the current renewal assuming a higher disclosure burden for the rule. This increase is offset in part by decreases in first year start-up burden resulting from the elimination of start-up burden estimates for existing renovators and rental property managers (but not new entrants to these occupations), and an increase in the estimated number of renovation events.

Next Step in the Process for this ICR

After providing a 30 day opportunity for additional comments from the public, OMB will review and take action on the Agency's request. OMB may extend the expiration date month-to-month until they take action (see 5 CFR 1320.10(e)(2) and 1320.12(b)(2)). Periodically, EPA publishes a notice in the **Federal Register** listing recent OMB actions on the Agency's ICR submittals.

Dated: September 5, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–22997 Filed 9–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7054–7]

Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants to States and Territories in FY 2002 and Subsequent Years

September 5, 2001.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has developed guidelines for the award of Clean Water Act section 319 nonpoint source grants in FY 2002 and subsequent years. The guidelines are intended to assist States and Territories in identifying the process and criteria to be used in distributing section 319 grants in FY 2002 and subsequent years. The process and criteria for FY 2002 are generally the same as for FY 2001, with only slight modifications. The process and criteria for FY 2003 and beyond provide for a more concentrated focus on the implementation of Total Maximum Daily Loads (TMDLs) related to NPS pollution.

DATES: The guidelines are effective September 13, 2001.

ADDRESSES: Persons requesting additional information should contact Romell Nandi at (202) 260–2324; *nandi.romell@epa.gov;* or U.S. Environmental Protection Agency (4503–F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

The complete text of today's guidelines is also available at EPA's Nonpoint Source website: *http://www.epa.gov/owow/nps/cwact.html*

Dated: September 5, 2001.

Carl F. Myers,

Acting Director, Office of Wetlands, Oceans, and Watersheds.

Memorandum

Subject: Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants to States and Territories in FY 2002 and Subsequent Years.

From: Carl F. Myers (for) Robert H. Wayland III, Director Office of Wetlands, Oceans, and Watersheds.

To: EPA Regional Water Division Directors State and Interstate Water Quality Program Directors.

To provide States and Territories (hereafter ''States'') with sufficient lead time to develop FY 2002 grant applications for nonpoint source funding (NPS) under Section 319 of the Clean Water Act (CWA), I am providing you the FY 2002 guidelines at this time. When the President signs EPA's FY 2002 appropriations bill later this year, my staff will immediately send you the State-by-State allocations based upon the long-standing 319 allocation formula. We also intend to publish guidance addressing Tribal allocations later this year.

Introduction

EPA and the States have held several significant meetings around the country during recent months in which we discussed the most appropriate means to restore waters that are listed as impaired by NPS pollution. In the national meetings of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) held in March and August of 2001, the States and EPA discussed the opportunities that exist to more effectively utilize CWA Section 319 funds to help implement TMDLs related to nonpoint source pollution (NPS TMDLs). In those meetings, State representatives expressed the view that Section 319 provides an appropriate and effective programmatic framework for States to develop and implement NPS TMDLs. This guidance is intended to strengthen the link between the Section 319 NPS program and the development and implementation of NPS TMDLs and to promote the use of Section 319 dollars to assist in the development and implementation of NPS TMDLs.

I appreciate the many helpful comments that we received from the States and EPA Regions in response to the draft guidelines that we provided to you for your review on May 24, 2001. The final guidelines make a number of significant changes in response to your comments. Most importantly, as explained in detail below, we have established FY 2002 guidelines as a transition year towards increasing the program's focus on implementing TMDLs; the full transition as envisioned in the draft guidelines will not take place until FY 2003. This will provide States with more time to complete the development of TMDLs and watershed-based plans that will provide a strong foundation for implementation activities.

Beginning in FY 2002, the U.S. Environmental Protection Agency (EPA) intends to promote increased use of Section 319 funds to develop and implement NPS TMDLs or the NPS components of mixed-source TMDLs (hereafter, both of these types of TMDLs will be referred to as ''NPS TMDLs''). NPS TMDLs, together with watershed-based plans designed to implement the NPS TMDLs, provide the necessary analytic link between actions on the ground and the water quality results to be achieved. In the absence of such an analytic framework, it is difficult to develop and implement a watershed project that will achieve water quality standards, or to determine causes of failure when that occurs. Therefore, EPA believes that improving the integration of NPS TMDLs and watershed plans to implement these NPS TMDLs will provide the most effective means to accelerate achievement of water quality standards.

The approach outlined below is intended to be used for the foreseeable future. However, as mentioned above, EPA has heard the States' concerns that States need more time to increase their focus upon implementing NPS TMDLs. Therefore, EPA will treat FY 2002 as a transitional year, so that full implementation of the new features of these guidelines will begin in FY 2003. I will first discuss the overall approach to be taken over FY 2003 and beyond, and then I will discuss the steps that we are asking the States to take in FY 2002.

Several earlier guidance documents govern the Section 319 grants process, and they remain in effect except to the extent that they are specifically modified in this memorandum. These are summarized in Appendix A to this memorandum. Next year, EPA will consolidate all current requirements and recommendations into a single document to make reference easier.

Focus on Restoring Waters Impaired by NYPS Pollution

In FY 1999 and 2000, EPA directed that $100 million (referred to as ''incremental funds'') be used to develop and implement watershed restoration action strategies (''WRASs'') in ''Category I'' watersheds that the states identified as most in need of attention. In FY 2001, EPA recognized the need to increasingly focus Section 319 grant dollars on implementing approved NPS TMDLs, under EPA's existing effective TMDL regulations and guidance. Based on this need, EPA stated that incremental funds may be used to develop and implement approved NPS TMDLs for any 303(d)-listed waterbodies (whether or not these were located within a Category I watershed), as well as to develop and implement WRASs.

Beginning in FY 2002, EPA will continue to strengthen its support for State efforts to implement NPS TMDLs. A focused and sustained effort to restore impaired waters is essential. NPS TMDLs, together with watershed-based plans to implement NPS TMDLs, provide the technical underpinning for defining the problems and designing the solutions to our nation's most pressing water quality problems. EPA has been pleased to observe that all of the upgraded State nonpoint source programs now place emphasis on the restoration of impaired waters.

For these reasons, EPA has decided to strengthen support for the State efforts with the steps outlined below. These steps are designed to promote the development and implementation of NPS TMDLs based upon the TMDL regulations that have been published at 40 CFR 130.7 in 1985 and 1992, as well as guidance published by EPA to assist in the implementation of those regulations.

FY 2003 and Beyond

Beginning in FY 2003, the following three principles will be applied:

1. States may continue to use up to 20% of the ''base'' funds (i.e., funds other than the incremental funds) to develop NPS TMDLs and watershed-based plans to implement NPS TMDLs, or to conduct other NPS monitoring and program assessment/development activities, as in the past. EPA anticipates that States will prioritize their NPS TMDL development activities in accordance with their TMDL schedules that they have developed pursuant to their Section 106 grants. (See pages 2–3 of the February 16, 2001, memorandum from Michael Cook, Director of EPA's Office of Wastewater Management, entitled ''FY 2001 Clean Water Act Section 106 Grant Guidance.'')

2. States may use 20% of the ''incremental'' $100 million funds to develop NPS TMDLs as well as watershed-based plans that describe the actions that are necessary to implement NPS TMDLs. In doing so, EPA asks the States to bear in mind that developing sets of NPS TMDLs on a watershed basis as a unified whole, and implementing those NPS TMDLs holistically, usually provides the most technically sound and economically efficient means of addressing water quality problems. Therefore, EPA encourages States to include in their watershed-based plans approaches that will address all of the sources of impairments and threats to the watersheds in question. Thus, the watershed-based plans should address not only NPS TMDLs, but also any pollutants and sources of pollution that must be addressed to assure the long-term health of the watershed.

We recognize that some States have not yet developed sufficiently detailed watershed-based plans to help the States and their partners determine which management measures or practices should be implemented in particular places in the watershed to assure that the load reduction identified in a NPS TMDL is achieved and that all significant water quality problems in the watershed are successfully addressed. In such cases, a State may need to use more than 20% of its incremental funds to develop sound watershed-based plans that can then be implemented successfully. Where this is the case, the State and the Region should discuss the State's need to devote greater resources to completing watershed-based plans, recognizing at the same time the urgent need to focus most 319 funds on actual implementation efforts to achieve water quality improvements. Based on these discussions, the Region may authorize the State to use more than 20% of the incremental funds to develop these watershed-based plans.

To ensure that Section 319 projects succeed in restoring waters impaired by nonpoint source pollution, watershed-based plans that are developed with Section 319 funds should include the following elements. These elements will help provide reasonable assurance that the nonpoint source load allocations identified in the NPS TMDL will be achieved, as discussed in the Assistant Administrator's August 8, 1997 memorandum, ''New Policies for Establishing and Implementing Total Maximum Daily Loads (TMDLs).'' (See also Appendix C of the May 1996 Nonpoint Source Guidance for more discussion of a ''well-designed watershed implementation plan'', which specifically discusses most of the elements listed below):

a. An identification of the sources or groups of similar sources that will need to be controlled to achieve the load reductions established in the NPS TMDL (and to achieve any other watershed goals identified in the watershed-based plan);

b. A description of the NPS management measures that will need to be implemented to achieve the load reductions established in the NPS TMDL (as well as to achieve other watershed goals identified in the watershed-based plan); an estimate of the load reductions expected for these management measures (recognizing the natural variability and the difficulty in precisely predicting the performance of management measures over time); and an identification of the critical areas in which those measures will need to be implemented to achieve the NPS TMDL;

c. An estimate of the sources of technical and financial assistance needed, and/or authorities that will be relied upon, to implement the plan. As sources of funding, States should consider the use of their 319 programs, State Revolving Funds, USDA's Environmental Quality Incentives Program and Conservation Reserve Program, and other relevant Federal, State, local and private funds that may be available to assist in implementing the plan;

d. An information/education component that will be used to enhance public understanding of the project and encourage their participation in selecting, designing, and implementing the NPS management measures;

e. A schedule for implementing the NPS management measures identified in the plan that is reasonably expeditious;

f. A description of interim, measurable milestones (e.g., amount of load reductions, or improvement in biological or habitat parameters) for determining whether NPS management measures or other control actions are being implemented;

g. A set of criteria that can be used to determine whether substantial progress is being made towards attaining water quality standards and, if not, the criteria for determining whether the NPS TMDL needs to be revised.

h. A monitoring component to evaluate the effectiveness of the implementation efforts, measured against the criteria established under item (g) immediately above.

3. States should use any remaining incremental funds to implement NPS TMDLs for which watershed-based plans have been completed. To assure that the implementation of NPS TMDLs actually results in the restoration of watersheds, as well as to maximize efficiencies, we recommend that States use these incremental 319 funds on a watershed basis to develop and implement the NPS TMDLs for all the waters impaired by nonpoint source pollution in a watershed. In addition, as in the plan development stage, we recommend that States' implementation activities funded by the grant also address other significant nonpoint sources and pollutants in these watersheds that are not addressed in the NPS TMDL, but that nonetheless should be controlled to assure a successful long-term solution to the watershed's existing and threatened water quality problems.

We recognize that States already have in place or have been developing watershed plans and strategies of varying levels of scale, scope, and specificity that may contribute significantly to the process of developing and implementing watershed-based plans. We encourage States to use these plans and strategies, where appropriate, as building blocks for developing and implementing the watershed-based plans. In particular, we recommend that States use their WRASs, water quality management plans (WQMPs), comprehensive coastal management plans (CCMPs), and other similar holistic watershed documents, to help guide their watershed-based approaches to NPS TMDL development and implementation.

We further recommend that States give their highest funding priority to projects that are supported by additional funding by other Federal, State, and local agencies, SRF funds, or private sector funding. Additionally, States should consult their SRF Program's Integrated Planning and Priority Setting System, if such system is in use, to address the highest priority water quality improvement projects (see www.epa.gov/owm/finan.html). Given the significant expense of many watershed projects, such an approach will help expedite successful implementation of needed practices and thus speed the restoration of water quality. It will also help assure that watersheds are addressed in a holistic manner that accounts for the broad variety of stressors in each watershed.

FY 2002: Transition to Increased Focus on Implementing TMDLs

EPA recognizes that the approach outlined above cannot be implemented immediately in all States. Some States are already implementing well-designed watershed projects in impaired waters for which no NPS TMDL has yet been established, and halting such a project pending development of a NPS TMDL and a watershed-based plan to implement the NPS TMDL may well be counterproductive. Furthermore, some States have already published requests for new project proposals to be submitted by local watershed groups and conservation districts for FY 2002 funding, and watershed projects have already been planned and submitted to the State by such groups.

To enable such projects to go forward and provide States and their local partners an adequate opportunity to transition into the use of a TMDL-based framework, EPA will use the following approach for the incremental 319 funds in FY 2002:

Step 1. If a State has developed any watershed-based plans to implement TMDLs, implementation of the TMDLs in those watersheds will receive the highest funding priority.

Step 2. A State may use any incremental 319 funds remaining after Step 1 to address Section 303(d)—listed waterbodies even in the absence of a NPS TMDL, provided that a watershed-based plan has already been developed which identifies the pollutants that are causing the water quality impairment and generally describes the types of measures or practices to be implemented to solve the water quality problem.

Step 3. For any watershed project addressing Section 303(d)-listed waterbodies and funded under the Section 319 grant, the State must commit in the work plan (and may use 319 funding) to develop a NPS TMDL and a watershed-based plan to implement the NPS TMDL. Continued funding of the project in FY 2003 would be contingent upon completion of the NPS TMDL and watershed-based plan.

Protection of Threatened Waters

While States need to place very high priority on the need to restore waters impaired by nonpoint source pollution, as described above, I wish to recognize and emphasize the continued need to protect waters that currently are not impaired by nonpoint source pollution to assure that they remain unimpaired. This particularly includes waters whose good quality is threatened by such factors as changing land uses. EPA recommends that States place a high priority for the use of their base Section 319 funding on such protective activity. This includes both on-the-ground projects and broader educational and regulatory programs established by the State to promote broad awareness and implementation of activities that can help protect these waters from degradation by new and expanded land use activities which cause nonpoint source pollution.

Operation and Maintenance

The question has arisen as to grantees' obligations to continue operating and maintaining measures and practices that have been funded with Section 319 dollars. Each Section 319 grant should contain a condition requiring that the State assure that its project sub-awards (e.g., sub-contracts and sub-grants) include a provision that any management practices implemented for the project be properly operated and maintained. For assistance in developing appropriate grant condition language, Regions should work with their Office of Regional Counsel. States may wish to consult with colleagues implementing similar programs, such as USDA's Environmental Quality Incentives Program, for information on how to develop appropriate contract language that is tailored to the types of practices expected to be funded in a particular project.

Reporting NPS Results

Section 319(h)(8) of the CWA requires EPA to determine, prior to awarding a Section 319 grant, that the State has made ''satisfactory progress'' in meeting the schedule set forth in its NPS management program. In addition, Section 319(h)(11) requires that States report annually to EPA concerning their progress in meeting their schedules of milestones contained in their nonpoint source management programs and, to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality. These annual reports in turn can assist the Region in making the satisfactory determination required by Section 319(h)(8).

To provide tools that facilitate these determinations and reports, EPA is in the process of modifying the nonpoint source grants computer-based data system, the Grants Reporting and Tracking System (GRTS), which will include new and modified data elements to be reported by States.

The most significant new mandated fields will be to: (1) Identify the location of the stream (or other waterbody) reach or reaches that are intended to be affected by each 319-funded project; (2) describe the project; (3) state whether the project consists of one or more of (a) the development of a NPS TMDL, (b) the development of a NPS TMDL implementation plan to achieve specific load-reduction goals, (c) the actual implementation of such a plan or (d) none of the above; and (4) annually provide (for nitrogen, phosphorus, and/or sediments) an estimate of load reductions achieved by the project. EPA intends to use these data as a means of tracking and reporting to Congress and the public the progress being made by States to successfully implement their NPS TMDLs and other projects to improve water quality.

We have now web-enabled GRTS, with appropriate password protections, to make it easier for States to use the system and to enable State sub-grantees to use GRTS as well (if the State chooses to allow them access). Furthermore, EPA has released the first version of WATERS (a new data system that currently contains 303(d) and water quality standards data), and we will now begin to link GRTS to WATERS through common geolocational identifiers. Thus, 319-funded watershed projects will be linked through geolocational data to water quality status and, over time, to water quality improvement information contained in WATERS. While there are likely to be a number of factors contributing to improvements in a particular waterbody's quality (e.g., point source controls as well as various non-319 funds and programs that address nonpoint sources), the geolocational link will enable EPA, States, and the public to at least note the contribution that 319-funded projects are making to such improvements.

To ensure that required information is input into GRTS, each Section 319 grant award must include a condition requiring that the State enter all mandated data elements into GRTS. Information that is available at the time of grant award (e.g., project location and description) should generally be entered into GRTS within 3 months of the receipt of the grant or by a specific date agreed to by the Region and State. Other information should be entered at the appropriate time after project implementation has begun (e.g., load reductions would be reported annually once project implementation has begun).

Conclusion

Significant challenges remain in our efforts to abate NPS pollution, protect threatened waters, and restore impaired aquatic resources. EPA will work with States to make the most effective use of Federal resources to meet these challenges.

If you have any questions or comments, please contact me at 202–260–7166 or *wayland.robert@epa.gov,* or have your staff contact Dov Weitman, Chief of the Nonpoint Source Control Branch, at 202–260–7088 or *weitman.dov@epa.gov.*

cc: State Nonpoint Source Coordinators
EPA Regional Water Quality Branch Chiefs
EPA Regional Nonpoint Source Coordinators
EPA Regional Clean Lakes Coordinators
EPA Regional TMDL Coordinators
Robbi Savage (ASIWPCA)

Appendix A—Significant Nonpoint Source Grants Guidance Documents

EPA has published several guidance documents that apply to the Section 319 grants guidance process. These documents are listed and briefly summarized below. Each of them may be reviewed online from the following address at EPA's nonpoint source website: www.epa.gov/owow/nps/cwact.html

(1) *Nonpoint Source Program and Grants Guidance for Fiscal Years 1997 and Future Years* (May 1996). This 33-page document is the chief national nonpoint source program document. It describes criteria and processes for States and Territories to upgrade their nonpoint source management programs; summarizes statutory and regulatory provisions that apply to the award of nonpoint source grants; and provides guidance designed to assist States and Territories in implementing effective programs and projects.

(2) *Process and Criteria for Funding State and Territorial Nonpoint Source Management Programs in FY 1999* (August 18, 1998). This 6-page document established guidelines for the use of incremental dollars ($100 million) that were anticipated to be appropriated later that year. The guidance (1) authorized States and Territories to use up to 20 percent of their Section 319 funds to upgrade and refined their nonpoint source programs and assessments; (2) directed that the incremental dollars be focused upon implementation of watershed restoration action strategies in high-priority watersheds identified by the States and Territories as not meeting clean water and other natural resource goals; and (3) established a schedule for the award of the incremental funds.

(3) *Funding the Development and Implementation of Watershed Restoration Action Strategies under Section 319 of the Clean Water Act* (December 4, 1998). This 4-page document reiterated the priority placed on using the incremental $100 million to address the States' and Territories' high-priority watersheds that do not meet clean water and other natural resource goals, focused particularly in sub-watershed where NPS control activities are likely to have the greatest positive impact. It identified 303(d) sub-watersheds as high-priorities for such work.

(4) *Supplemental Guidance for the Award of Section 319 Nonpoint Source Grants in FY 2000* (December 21, 1999). This 10-page document (1) asked Regions to assure that, for all 319-

funded programs or projects that assist animal feeding operations (AFOs), the 319 grants include a provision (either as a grant condition or through a separate document such as a work plan or BMP implementation plan) to assure that any AFO that receives financial assistance pursuant to the grant has and will implement a comprehensive nutrient management plan; (2) recommended steps intended to achieve a suggestion by the congressional appropriations committees that 5 percent of the Section 319 funds be allocated to clean lakes; and (3) announced and discussed EPA's intention to work with the States to consider changes to the Section 319 reporting/tracking system to support program needs, including promoting better integration with Section 305(b) data and Section 303(d) lists.

(5) *Supplemental Guidance for the Award of Section 319 Nonpoint Source Grants in FY 2001* (65 FR 70899–70905, Nov. 28, 2000). This document (1) discussed how States and Territories may use funding increases appropriated in FY 2001; (2) broadened the use of the ''incremental'' ($100 million) to authorize their use to develop and implement TMDLs for any 303(d)-listed waterbodies throughout the State; and (3) directed EPA Regional offices to condition grants to those States with conditional approval under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (''CZARA'') devote at least $100,000 of its FY 2001 319 grant dollars to specific actions that are designed to meet all outstanding conditions for NOAA and EPA approval.

[FR Doc. 01–22994 Filed 9–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34248; FRL–6802–7]

Availability of Phosmet Partial Interim Reregistration Eligibility Decision Document for Comment and Availability of Benefits Assessments for Azinphos-methyl and Phosmet

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 60–day public comment period on the partial Interim Reregistration Eligibility Decision document (IRED) for the pesticide active ingredient phosmet. The document represents EPA's partial formal regulatory assessment of the health and environmental data base of the subject chemical and presents the Agency's determination on a partial list of uses (17 use sites) for which phosmet is eligible for reregistration. This notice also announces the availability of twenty-four Benefits Assessments for azinphos-methyl and phosmet. These documents provide a biological assessment of the use of azinphos-methyl and phosmet, and an economic assessment of the impacts on revenue and crop production caused by potential modification to existing use patterns. Any comments on the benefits assessments should be provided to EPA as soon as possible to ensure their consideration in the Agency's decisions.

DATES: Comments, identified by docket control number OPP–34248, must be received on or before November 13, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**: To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34248 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Carol Stangel, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8007; and e-mail address: *stangel.carol@epa.gov.*

For technical questions contact: Diane Isbell, Chemical Review Manager, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8154; and e-mail address: *isbell.diane@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticide users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homepage at *http://www.epa.gov/*. To access this document, on the homepage select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. To access RED and IRED documents electronically, go directly to information on the EPA Office of Pesticide Programs homepage, at *http://www.epa.gov/pesticides/reregistration/status.htm.*

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34248. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34248 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records

Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to:*opp-docket@epa.gov*, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34248. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

The Agency has issued a partial Interim RED for the pesticide active ingredient phosmet. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. This IRED is a partial decision on 17 of the 43 use sites for phosmet. The Agency is making a partial decision on this pesticide because phosmet and azinphos-methyl benefits are linked. The phosmet use sites that are not addressed in this document will be addressed once the azinphos-methyl IRED is completed. The data base to support the reregistration of this partial list of use sites for phosmet is substantially complete, and the pesticide's risks have been mitigated so that it will not pose unreasonable risks to people or the environment when mitigation is implemented. In addition, EPA is reevaluating existing pesticides and reassessing tolerances under the Food Quality Protection Act (FQPA) of 1996. The pesticides included in this notice also are being evaluated to ensure that they meet the FQPA safety standard.

All registrants of pesticide products containing phosmet have been sent the partial IRED. The label requirements and product specific data requirements are not included in the partial Interim RED for phosmet, but will be included once the entire phosmet Interim RED is completed.

The reregistration program is being conducted under Congressionally-mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this partial Interm RED with a 60–day comment period. It is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the partial IRED. All comments will be carefully considered by the Agency. If any comment significantly affects the Agency's findings or decisions on phosmet, EPA will reflect the appropriate changes in issuing the complete IRED for phosmet.

B. What is the Agency's Authority for Taking this Action?

The legal authority for this partial IRED falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products, and either reregistering products or taking ''other appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 5, 2001.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–23004 Filed 9–12–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34225F; FRL–6800–6]

Diazinon; Receipt of Requests For Amendments, and Cancellations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Several companies that manufacture diazinon (O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate) pesticide products have asked EPA to cancel or amend the registrations for their end-use products containing diazinon to delete all indoor uses, certain agricultural uses and certain outdoor non-agricultural uses. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests. These requests for voluntary termination of the above mentioned

uses through registration cancellations or amendments were submitted to EPA in May, June, and August 2001. EPA intends to grant these requests by issuing a cancellation order at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of these requests. Upon the issuance of the cancellation order, any distribution, sale, or use of diazinon products listed in this Notice will only be permitted if such distribution, sale, or use is consistent with the terms of that order.

DATES: Comments on the requested amendments to delete uses and the requested registration cancellations must be submitted to the address provided below and identified by docket control number OPP–34225. Comments must be received on or before October 15, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34225 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: John Hebert, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6249; fax number: (703) 308–7042; e-mail address: *hebert.john@epa.gov.*

SUPPLEMENTARY INFORMATION: This announcement consists of three parts. The first part contains general information. The second part addresses the registrants' requests for registration cancellations and amendments to delete uses. The third part proposes existing stocks provisions that will be set forth in the cancellation order that the Agency intends to issue at the close of the comment period for this announcement.

General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use diazinon products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homepage at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the **Federal Register**—Environmental Documents. You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. To access information about the risk assessment for diazinon, go to the homepage for the Office of Pesticide Programs or go directly to *http://www.epa.gov/pesticides/op/diazinon.htm.*

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34225. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34225 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34225. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

Certain registrants requested in letters dated May, June, and August 2001, that their diazinon registrations be amended to delete all indoor uses, certain agricultural uses, and any other uses that the registrants do not wish to maintain. The requests also included deletions of outdoor non-agricultural uses from the labeling of certain end-use products so that such products would be labeled for agricultural uses only. Similarly, other diazinon end-use registrants requested voluntary cancellation of their diazinon end-use registrations with indoor use and/or certain outdoor non-agricultural uses, and any other uses that the registrants do not wish to maintain. Pursuant to section 6(f)(1) of the FIFRA, EPA is announcing the Agency's receipt of these requests.

These requested cancellations and amendments are consistent with the requests in December 2000, by the manufacturers of diazinon technical products, and EPA's approval of such requests, to terminate all indoor uses and certain agricultural uses from their diazinon product registrations because of EPA's concern with the potential exposure risk, especially to children. The indoor uses and agricultural uses subject to cancellation are identified in List 1 below:

List 1.—Uses to be Canceled

Indoor uses. Pet collars, or inside any structure or vehicle, vessel, or aircraft or any enclosed area, and/or on any contents therein (except mushroom houses), including, but not limited to food/feed handling establishments, greenhouses, schools, residences, commercial buildings, museums, sports facilities, stores, warehouses, and hospitals.

Agricultural uses. Alfalfa, bananas, Bermuda grass, dried beans, dried peas, celery, red chicory (radicchio), citrus, clover, coffee, cotton, cowpeas, cucumbers, dandelions, forestry, (ground squirrel/rodent burrow dust stations for public health use), kiwi, lespedeza, parsley, parsnips, pastures, peppers, potatoes (Irish and sweet), sheep, sorghum, squash (winter and summer), rangeland, Swiss chard, tobacco, and turnips (roots and tops).

As mentioned above, the requests announced in this **Federal Register** notice also include registration cancellations and/or amendments to terminate certain uses that the registrants do not wish to maintain. The specific requests are identified in Tables 1 and 2 of this notice.

EPA has begun the process of reviewing the requested amendments which cannot be finalized until the end of the public comment period and provided that no substantial comments need to be addressed. EPA also intends to grant the requested product and use cancellations by issuing a cancellation order at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of these requests.

B. Requests for Voluntary Cancellation of End-Use Products

The registrants and end-use product registrations containing diazinon for which cancellation was requested are identified in the following Table 1.

TABLE1.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Registration Number	Product Name: Use Deletions
Value Garden Supply, LLC	70–177	Kill-Ko Diazinon 2E Insect Spray
	70–249	Rigo Diazinon AG500 Insecticide
	70–252	Rigo Diazinon 5% Granules
	192–145	Dexol Diazinon 25% Insect Spray
	192–165	Dexol Diazinon 2% Granules
	192–194	Dexol Ant and Roach Killer
	192–208	Dexol Diazinon Insect Spray
	769–569	Stephenson Chemicals D.P.S. Roach Powder
	769–571	Suregard Diazinon Spray
	769–630	SMCP Special Residual Insect Spray
	769–750	PCE Diazinon-Pyrethrum Residual Spray
	769–754	PCE Diazinon DDVP Residual Spray
	769–755	X-It Formula 120
	769–768	PCE Diazinon Roach Dust
	769–769	Formulation 050
	769–784	Di-Azz Ready-to-Use
	769–791	Superior Dy-All
	769–824	PCO Crack and Crevice
	769–861	Pratt Diazinon 25E Insect Spray
	769–862	Pratt Diazinon 5% Granular Lawn Insect Control
	769–863	Pratt Diazinon 2% Granular Lawn Insect Control
	769–890	Agrisect Diazinon 5% Granular
	769–891	Agrisect Brand Insecticide Diazinon 2% Dust for Military Use
	769–922	Science 5% Diazinon Dust
	769–930	Warner Enterprises Ant, Roach, and Spider Spray
	769–956	Pratt 14% Diazinon
	769–974	Diazinon 22.4% Lawn and Garden Water Based Insecticide
	5887–104	Black Leaf 5% Diazinon Dust
	5887–124	Black Leaf 5% Diazinon Granules
	5887–132	Black Leaf 25% Diazinon
Whitmire Micro-Gen	499–228	PT 265-A Knox Out Microencapsulated
		Diazinon Research Laboratories, Inc.
	499–330	Whitmire TKO Microencapsulated Diazinon (PT 265)
	499–422	TC 132 (TKO PT 265-Greenhouse)
Prentiss Incorporated	655–457	Prentox® Diazinon 4E Insecticide
	655–462	Prentox® Diazinon 4S Insecticide
	655–465	Prentox® Diazinon 2D Insecticide Dust
	655–519	Prentox® Liquid Household Spray #1
	655–645	Prentox® Diazinon Emulsifiable Concentrate
	655–799	Prentox® Diazinon Lawn and Garden Insecticide
Green Light Company	869–219	Green Light Diazinon 25
PBI Gordon Corporation	2217–496	Gordon's Wasp and Hornet Bomb
Sergeant's Pet Products, Inc.	2517–24	Double Duty Plus Flea and Tick Collar with Nutrisorb for Dogs
	2517–25	Double Duty Plus Flea and Tick Collar with Nutrisorb for Cats
	2517–29	Double Duty Reflecting Flea and Tick Collar for Cats
	2517–30	Double Duty Reflecting Flea and Tick Collar
Cerexagri, Inc.	4581–379	KNOX OUT® GH
Helena Chemical Company	5905–441	Omni-Diazinon
	5905–444	Helena Diazinon 40W
	5905–525	Diazinon 4EC
Chemical Packaging Corp.	7405–2	Chemi-Cap Roach and Ant Killer
Pursell Industries, Inc.	8660–46	VertaGreen Household Insecticide
	8660–59	VertaGreen Sod Webworm Spray
	8660–79	VertaGreen Diazinon 12.5% Insect Spray
	8660–89	VertaGreen Diazinon 500 Insecticide
	8660–91	VertaGreen Diazinon Insecticide 25 Emulsifiable Concentrate
	8660–95	VertaGreen for Pro Use Diazinon 14G
	8660–103	VertaGreen Lawn Food and Insecticide
	8660–124	VertaGreen Diazinon AG 500 Insecticide
	8660–206	Koos Nature's Best Lawn and Garden Insect Control
	8660–233	Vigro 5% Diazinon Granules Lawn and Garden Insect Control

TABLE1.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Company	Registration Number	Product Name: Use Deletions
Spectrum Group, Division of United Industries Corp.	8845–94 8845–124	Sprectracide Crawling Insect Control Granules Sprectracide Granules Formula 2
Safeguard Chemical Corp.	8848–4 8848–55 8848–56 8848–57 8848–58	5–11 Roach and Bug Killer Black Jack Roach and Ant Killer IV 707 Residual Formula-4 Roach Bomb 707 Landlord's Formula Two 707 Residual Formula #2
Sunniland Corporation	9404–65	25% Diazinon Liquid Concentrate
Chemsico, Division of United Industries Corp.	9688–92 9688–128 9688–132	Chemsico Granules Formula 1 Chemsico Diazinon Insect Spray Chemsico Insecticide PD
Agriliance	9779–212	Diazinon 4E
The Sherman Williams Co.	10900–96	Rescue Ant and Roach
Sungro Chemicals, Inc.	11474–31 11474–34 11474–72	Sungro Residual Roach Dope Sunbugger Residual Ant and Roach Aqueous Power Residual Spray
Speer Products Incorporated	11715–3 11715–16 11715–51 11715–90 11715–124 11715–216 11715–296	Speer Bug Killer Speer Professional Formulation Diazion Bug Killer Speer Insecticide Diazinon Speer Professional Home Pest Control Better World Multi-Purpose Aqueous Spray Sudbury Diazinon Insect Spray 5% Diazinon Granules Lawn and Garden Insect Control
Louisiana Chemical U.S.A., Incorporated	11746–32 11746–33 11746–42	Davis Kill-A-Bug III Davis Kill-A-Bug IV Davis Kill-A-Bug 4E
Drexel Chemical Company	19713–92	Drexel D-264 4E
Unicorn Laboratories	28293–229 28293–240 28293–241 28293–242 28293–243 28293–244 28293–245 28293–246 28293–247 28293–248 28293–249 28293–250 28293–251	Unicorn Diazinon 4E Unicorn Diazinon Granular Lawn Insect Control Unicorn Diazinon½% EW Insecticide Unicorn Diazinon Home Pest Control Insecticide Unicorn Diazinon Home Pest Control Insecticide II Unicorn Diazinon Home Pest Control Pressurized Insecticide Unicorn Diazinon 1% ME Insecticide Unicorn Diazinon 0.5 RTU Insecticide Unicorn Diazinon 2.0 Insecticide Unicorn Diazinon ½% ME Insecticide Unicorn Diazinon 1% EW Insecticide Unicorn Diazinon 5.0 EW Insecticide Unicorn Diazinon 2D Insecticide Dust
Professional Supply, Inc.	37915–4	Professional Brand Pest Control Formula D 4E
Quest Chemical Corp.	44446–7 44446–44	CS 101 Roach and Ant Spray Double Trouble Water Base Diazinon Roach and Ant Spray
Celex, Division of United IndustriesCorp.	46515–17	Super K-GRO Fruit and Vegetable Insect Control
Marman USA, Inc.	48273–24	Marman Diazinon 48 EC
Alljack, Division of United Industries Corp.	49585–3 49585–5	Diazinon Granules Diazinon Soil and Turf
MicroFlo Company	51036–64 51036–197	Diazinon 4E Diazinon 4E AG
ProGuard, Inc.	58866–10	Master Nurseyman Diazinon-25 Insect Control
PM Resources, Inc.	67517–18 67517–29 67517–62	Diazinon Insecticide 25E Diazinon Granules 5% Diazinon Lawn and Garden WBC

TABLE1.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Company	Registration Number	Product Name: Use Deletions
Contract Packaging, Inc.	67572–79	CP Diazinon Lawn and Garden WB Concentrate

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that EPA cancel any of their pesticide registrations. Section 6(f)(1)(B) of FIFRA requires that EPA provide a 30–day period in which the public may comment before the Agency may act on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless:

i. The registrants request a waiver of the comment period.

ii. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

In this case, all of the registrants have requested that EPA waive the 180–day comment period. In light of this request, EPA is granting the request to waive the 180–day comment period and is providing a 30–day public comment period before taking action on the requested cancellations. Because of risk concerns posed by certain uses of diazinon, EPA intends to grant the requested cancellations at the close of the comment period for this announcement unless the Agency receives any substantive comment within the comment period that would merit its further review of these requests.

C. Requests for Voluntary Amendments to Delete Uses From the Registrations of End-Use Products

Pursuant to section 6(f)(1)(A) of FIFRA, the following companies have submitted a request to amend the registrations of their pesticide end-use products containing diazinon to delete certain uses from certain products. The following Table 2 identifies the registrants, the product registrations that they wish to amend, and the uses that they wish to delete through registration amendments. Table 2.

TABLE 2.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

Company	Registration Number	Product Name: Use Deletions
The Scotts Company	239–2479	Ortho Diazinon Soil and Turf Insect Control: Celery
Prentiss Incorporated	655–556	Diazinon 5G Insecticide: Celery
	655–557	Prentox Diazinon 14G: Beans (lima, pole, snap; succulent varieties only), Celery, Cucumbers, Parsley, Peas (succulent varieties only), Peppers, Potatoes, Squash (summer and winter), Sweet Potatoes, Swiss Chard, and Turnips
Southern Agricultural Insecticides, Incorporated	829–262	SA–50 Diazinon AG 500 Insecticide: Cucumbers, Peppers, Potatoes, Squash (summer and winter), Swiss Chard, Lawns, Grasslands Insects, and Nuisance Pests in Outside Areas
The Green Light Company	869–139	Green Light Diazinon 5 Granules: Celery
	869–231	Green Light Diazinon: Almonds
Lebanon Seaboard Corporation	961–358	Lebanon Lawn and Garden Insecticide with Diazinon 5G: Celery
Wilbur-Ellis Company	2935–388	Diazinon 4 Spray: Beans, Cucumbers, Parsley, Parsnips, Peas, Peppers, Potatoes, Squash, Sweet Potatoes, Swiss Chard,Turnips, Grasslands, Ditch Banks, Roadsides, Wasteland, Non-crop Areas, Barrier Strips, Ornamental (not grown outdoor in nurseries), Lawn Pest Control, and Nuisance Pests in Outside Areas
	2935–408	Diazinon 14G: Beans, Celery, Cucumbers, Parsley, Peas, Peppers, Potatoes, Squash, Sweet Potatoes, Swiss Chard, and Turnips
Cerexagri Incorporated	4581–392	KNOX OUT® NL: Commercial Landscape Uses (ornamentals in landscaped, mulched, or plant bed areas of commercial properties)

TABLE 2.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS—Continued

Company	Registration Number	Product Name: Use Deletions
Helena Chemical Company	5905–248 5905–262 5905–474 5905–526	Diazinon AG500 Insecticide: Beans (lima, snap, and pole; succulent only), Parsley, Parsnips, Peas (succulent only), Peppers, Potatoes (Irish), Squash (summer and winter), Sweet Potatoes, Swiss Chard, Ornamentals (outdoor nurseries only), Lawns, and Nuisance Pests in Outdoor Areas Diazinon 14G: Beans (lima, snap, and pole; succulent only), Parsley, Peas (succulent only), Peppers, Potatoes, Squash (summer and winter), Sweet Potatoes, and Swiss Chard Helena Diazinon 7E Insecticide: Beans (lima, snap, and pole; succulent only), Parsley, Parsnips, Peas (succulent only), Peppers, Potatoes (Irish), Squash (summer and winter), Sweet Potatoes, Swiss Chard, Ornamentals (outdoor nurseries only), Lawns, Grassland Insects, and Nuisance Pests in Outside Areas Diazinon 50 WP Insecticide: Beans (lima, snap, and pole; succulent only), Parsley, Parsnips, Peas (succulent only), Peppers, Potatoes (Irish), Squash (summer and winter), Sweet Potatoes, Swiss Chard, Ornamentals (outdoor nurseries only), Lawns, Livestock Insects, Fly Control in Livestock Structures, Lawns, and Nuisance Pests in Outside Areas
Chemsico, Division of United Industries Corporation	8845–92 8845–95	Spectracide Lawn and Garden Insect Control Concentrate: Almonds Spectracide 6,000 Lawn and Garden Insect Control: Celery
The Andersons, Incorporated	9198–62	The Andersons Lawn and Garden Insecticide 5% Diazinon: Celery
Lesco	10404–23	LESCO Diazinon 5G Granular Insecticide: Celery
Howard Johnson's Enterprises, Incorporated	32802–5	All Season Diazinon 5G Insecticide: Celery
PBI Gordon Corporation	33955–556 33955–557	Acme Diazinon 25% Emulsifiable Concentrate: Almonds Acme Diazinon 5G Lawn and Garden Insect Control: Celery
Platte Chemical Company	347047–41 34704–57 34704–230 34704–231 34704–435 34704–493	Clean Crop Diazinon AG500 Insecticide: Cucumbers, Parsley, Parsnips, Peppers, Potatoes, Squash (summer and winter), Sweet Potatoes, Swiss Chard, Turnips, Grassland Insects, Lawns, and Nusiance Pests in Outside Areas Clean Crop Diazinon 5 Lawn and Garden: Celery Diazinon G–14: Celery, Cucumbers, Parsley, Peppers, Potatoes, Squash (summer and winter), Sweet Potatoes, Swiss Chard, and Turnips Diazinon 500–AG: Cucumbers, Parsley, Parsnips, Peppers, Potatoes, Squash (summer and winter), Sweet Potatoes, Swiss Chard, Turnips, Grassland Insects, Lawn Pest Control, and Nuisance Pests in Outside Areas Clean Crop Diazinon 50WP Insecticide: Cucumbers, Parsley, Parsnips, Peppers, Potatoes, Squash (summer and winter), Sweet Potatoes, Swiss Chard, Turnips, Grassland Insects, Livestock Insects, Fly Control in Livestock Structures, Lawns, and Nusiance Pests in Outside Areas Diazinon 5 Granules: Celery, Collards, Cucumbers, Parsley, Peppers, Potatoes, Squash (summer and winter), Sweet Potatoes, Swiss Chard, Turnips, Lawns, and Band Treatment Around House Foundation
Professional Supply, Incorporated	37915–6	Professional Brand Pest Control Formula DC–500: Pole Beans
Enforcer Products, a Division of National Service Industries, Incorporated	40849–30	Enforcer Ant Kill Granules II: Pole Beans and Celery

TABLE 2.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS—Continued

Company	Registration Number	Product Name: Use Deletions
Morgro, Incorporated	42057–90 42057–107	Morgro Diazinon 25% Spray: Oranges Morgro 5% Diazinon Granules: Celery
Walla Walla Environmental	47332–4	CPF 2D: farm buildings including dairy barns and milk parlors warehouses, office buildings, theaters, schools, motels, hotels, factories, and out buildings
Mircro Flo Company	51036–97	Diazinon 5G Homeowner: Celery
Gro Tec, Incorporated	59144–2 59144–28	5% Diazinon Granules: Pole Beans and Celery Diazinon Lawn and Garden Insecticide: Almonds and Pole Beans
Hacco, Incorporated	61282–25	Diazinon Lawn and Garden WBC: Almonds
Guardsman Products, Incorporated	62366–2	Bug Stuff: Office Buildings, Schools, Hotels, Motels, Warehouses, Theaters, Barns, Farm Buildings (including dairy barns and milk parlors), Factories, and Outbuildings
Contract Packaging, Inc.	67572–1	CP Diazinon Lawn and Garden WB Ready-to-Use: Almonds and Pole Beans

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be amended to delete one or more pesticide uses. The aforementioned companies have requested to amend their registrations and have requested that EPA waive the 180–day comment period. In light of this request, EPA is granting the request to waive the 180–day comment period and is providing a 30–day public comment period before taking action on the requested amendments to delete uses. Because of risk concerns posed by certain uses of diazinon, EPA intends to grant the requested amendments to delete uses at the close of the comment period for this announcement, unless the Agency receives any substantive comment within the comment period that would merit its further review of these requests.

III. Proposed Existing Stocks Provisions

EPA received requests for voluntary cancellation of the diazinon registrations identified in Tables 1 and requests for amendments to terminate certain uses of the diazinon registrations identified in Table 2. Pursuant to section 6(f) of FIFRA, EPA intends to grant these requests by issuing a cancellation order at the end of the 30–day comment period unless the Agency receives any substantive comment within the comment period that would merit its further review of these requests. In the event that EPA issues a cancellation order, EPA intends to include in that order the existing stocks provisions set forth in this section. For purposes of that cancellation order, the term ‘‘existing stocks’’ will be defined, pursuant to EPA's existing stocks policy at 56 FR 29362, June 26, 1991, as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation or amendment. Any distribution, sale, or use of existing stocks after the effective date of the cancellation order that the Agency intends to issue that is not consistent with the terms of that order will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA.

EPA intends that the cancellation order includes the following existing stocks provisions:

1. *Distribution or sale of products bearing instructions for use on agricultural crops*. The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use on the agricultural crops identified in List 1 will not be lawful under FIFRA 1 year after the effective date of the cancellation order. Persons other than the registrant may continue to sell or distribute the existing stocks of any product listed in Table 1 or 2 that bears instructions for any of the agricultural uses identified in List 1 after the effective date of the cancellation order. However, it is lawful to ship such stocks for export consistent with the requirements of section 17 of FIFRA, or to properly dispose of the existing stocks in accordance with all applicable law.

2. *Distribution or sale of products bearing instructions for use on outdoor non-agricultural sites*. The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use on outdoor non-agricultural sites will not be lawful under FIFRA 1 year after the effective date of the cancellation order. Persons other than the registrant may continue to sell or distribute the existing stocks of any product listed in Table 1or 2 that bears instructions for use on outdoor non-agricultural sites after the effective date of the cancellation order. However, it is lawful to ship such stocks for export consistent with the requirements of section 17 of FIFRA, or to properly dispose of the existing stocks in accordance with all applicable law.

3. *Distribution or sale of products bearing instructions for use on indoor sites*. The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use at or on any indoor sites (except mushroom houses), shall not be lawful under FIFRA as of the effective date of the cancellation order, except for shipping stocks for export consistent with the requirements of section 17 of FIFRA, or properly disposing of the existing stocks in accordance with all applicable law.

4. *Retail and other distribution or sale of existing stock of products for indoor use*. The retail sale of existing stocks by any person other than the registrants of products listed in Table 1 or 2 bearing instructions for any indoor uses except mushroom houses will not be lawful under FIFRA after December 31, 2002, except for shipping stocks for export consistent with the requirements of section 17 of FIFRA, or properly

disposing of the existing stocks in accordance with all applicable law.

5. *Use of existing stocks*. EPA intends to permit the use of existing stocks of products listed in Table 1 or 2 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated:August 31, 2001.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–23005 Filed 9–12–01; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34242; FRL–6789–5]

Endosulfan Pesticides; Availability of Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of risk assessments that were developed as part of EPA's process for making pesticide Reregistration Eligibility Decisions (REDs) and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These risk assessments are the human health and ecological risk assessments and related documents for endosulfan. This notice also starts a 60–day public comment period for the risk assessments and risk management strategies. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure decisions made under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply.

DATES: Comments, identified by the docket control number OPP–34242 for endosulfan, must be received on or before November 13, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit II. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify the docket control number OPP–34242 for endosulfan in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Stacey Milan, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–2505; e-mail address: milan.stacey@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the risk assessments for endosulfan, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'', ''Regulations and Proposed Rules,'' and then look up the entry for this document under the **Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the pesticide risk assessments released to the public may also be accessed at http://www.epa.gov/pesticides/reregistration/status.htm.

2.*In person*. The Agency has established an official record for this action under docket control numbers OPP–34242. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed,paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number for the specific chemical of interest in the subject line on the first page of your response.

1. *By mail*. Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. Submit electronic comments by e-mail to: opp-docket@epa.gov or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by the docket control number of the chemical of specific interest. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be

CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

III. What Action is the Agency Taking?

EPA is making available to the public the risk assessments that have been developed as part of the Agency's interim public participation process for tolerance reassessment and reregistration. During the next 60 days, EPA will accept comments on the human health and ecological risk assessments and other related documents for endosulfan, available in the individual pesticide docket. Like other REDs for pesticides developed under the interim process, the Endosulfan RED will be made available for public comment.

EPA and USDA have been using a pilot public participation process for the assessment of organophosphate pesticides since August 1998. In considering how to accomplish the movement from the current pilot being used for the organophosphate pesticides to the public participation process that will be used in the future for non-organophosphates, such as endosulfan, EPA and USDA have adopted an interim public participation process. EPA is using this interim process in reviewing the non-organophosphate pesticides scheduled to complete tolerance reassessment and reregistration in 2001 and 2002. The interim public participation process ensures public access to the Agency's risk assessments while also allowing EPA to meet its reregistration commitments. It takes into account that the risk assessment development work on these pesticides is substantially complete. The interim public participation process involves: A registrant error correction period; a period for the Agency to respond to the registrant's error correction comments; the release of the refined risk assessments and risk characterizations to the public via the docket and EPA's internet website; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management decision document (i.e., RED) after the consideration of issues and discussions with stakeholders. USDA plans to hold meetings and conference calls with the public (i.e., interested stakeholders such as growers, USDA Cooperative Extension Offices, commodity groups, and other Federal government agencies) to discuss any identified risks and solicit input on risk management strategies. EPA will participate in USDA's meetings and conference calls with the public. This feedback will be used to complete the risk management decisions and the RED. EPA plans to conduct a close-out conference call with interested stakeholders to describe the regulatory decisions presented in the RED. REDs for pesticides developed under the interim process will be made available for public comment.

Included in the public version of the official record are the Agency's risk assessments and related documents for endosulfan. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed. The endosulfan risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 22, 2001.

Lois Rossi

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–23002 Filed 9–12–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34171D; FRL–6801–9]

Ethyl Parathion; Notice of Use Cancellations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order of product and use cancellations, as requested by Cheminova, Inc., Universal Cooperatives, Inc., Wilbur-Ellis, Co., Amvac Chemical Co., Helena Chemical, Agriliance LLC and Micro-Flo Co., for their registrations containing *O,O*-diethyl-*O*-p-nitrophenyl thiophosphate, or ethyl parathion, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows up a May 2, 2001, notice of receipt of requests to cancel ethyl parathion product registrations by certain dates and to immediately terminate the use of ethyl parathion on corn grown for seed. EPA has considered the comments received in response to the May 2, 2001 notice prior to its issuance of this cancellation order. Any distribution, sale, or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective September 13, 2001.

FOR FURTHER INFORMATION CONTACT: Laura Parsons, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5776; fax number: (703) 308–7042; e-mail address: *parsons.laura@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use ethyl parathion products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the

entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. To access information about the risk assessment and Reregistration Eligibility Decision for ethyl parathion, go to the homepage for the Office of Pesticide Programs, or go directly to *http://www.epa.gov/pesticides/reregistration/ethyl_parathion*.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34171D. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Receipt of Requests to Amend Registrations to Delete Uses

A. Background

Ethyl parathion is an organophosphate insecticide/miticide currently registered for use on alfalfa, barley, corn, cotton, canola, sorghum, soybean, sunflower, and wheat crops. In 1991, EPA and the registrants reached an agreement that limited ethyl parathion use to these nine current crop sites, and restricted application and postapplication practices to mitigate extreme acute toxicity risks to workers. As a result, to protect workers, ethyl parathion may only be handled by trained certified applicators, using closed mixing and loading systems, may only be applied aerially, and crops treated with the pesticide may only be harvested mechanically.

Even with the post–1991 use restrictions, EPA's revised risk assessment completed in September 1999, showed high levels of worker and ecological risk from legal uses of ethyl parathion. There were also several unfulfilled data requirements. After viewing the revised risk assessment and outstanding data requirements, Cheminova, Inc.; Cheminova, A/S, and EPA signed a memorandum of agreement (MOA) effective October 10, 2000. In accordance with this MOA, Cheminova, Inc., has requested to amend their end-use product registrations to immediately terminate the use on corn grown for seed which can result in higher exposures to workers. Further, Cheminova, A/S, the only registrant with an ethyl parathion manufacturing-use product registration, has requested to immediately cancel that registration. Also, these registrants have requested voluntary cancellation of all their ethyl parathion end-use product registrations effective as of December 31, 2002. Most other companies holding registrations for ethyl parathion products have also written letters to the EPA requesting voluntary cancellation of all their ethyl parathion products effective immediately.

EPA announced these registration cancellation and amendment requests in a **Federal Register** notice (66 FR 21964; May 2, 2001) (FRL–6770–9) and asked for public comments. In response, one comment was received from the Oklahoma Cooperative Extension Service, requesting that the last legal use date be extended from October 31, 2003 to December 31, 2003. This comment stated that this extension would provide extra time for use and that it would be easier for users to identify the end of use with the end of the calendar year.

October 31, 2003 was chosen as the last date for use of ethyl parathion after consultations with the registrants to estimate when stocks would be depleted. According to historical use information, there is little ethyl parathion use in November and December, consequently extending the date would be of little practical value. Additionally, it was expected that little or no existing stocks would be available by this date. EPA acknowledges that there is merit in users identifying with the end of the year. However, the October 31, 2003 date has been widely publicized; changing the date may generate more confusion than using the originally published date.

B. Requests for Voluntary Cancellation

Registrants have requested voluntary cancellation of all their ethyl parathion registrations either by signing a MOA or by submitting a letter to the Agency. Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless the registrants request a waiver of the comment period, or the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrant has requested that EPA waive the 180–day comment period. EPA granted the registrants' request to waive the 180–day comment period and provided a 30–day public comment period before taking action on the requested cancellations. Given the potential worker and ecological risk that ethyl parathion use poses, EPA has decided to issue a cancellation order in this notice granting the requested cancellations. The specific cancellation requests are set forth below.

1. Requests for termination of use on corn grown for seed. In accordance with the MOA, Cheminova, Inc., has requested that its end-use product registrations be amended to immediately terminate the use on corn grown for seed. The requested use termination of the end-use products identified in Table 1 is granted by EPA's cancellation order in this notice.

TABLE 1. — END-USE PRODUCT REGISTRATION DELETING USE ON CORN GROWN FOR SEED.

Company	Registration No.	Product Name
Cheminova, Inc.	67760–37	Parathion 4EC
	67760–38	Parathion 8EC
	67760–39	Ethyl-Methyl Parathion 6–3 EC

2. Requests for voluntary cancellation of manufacturing–use product registrations. Pursuant to the Agreement and FIFRA section 6(f)(1)(A), Cheminova, A/S, the only registrant with a manufacturing-use product registration, has submitted a request for voluntary cancellation of registration for its one and only ethyl parathion manufacturing-use product. This cancellation request is granted by EPA's cancellation order in this notice. The registration for which cancellation was requested is identified in the following Table 2.

TABLE 2. — MANUFACTURING-USE PRODUCT REGISTRATION CANCELLATION REQUESTS.

Company	Registration No.	Product Name
Cheminova, A/S	4787–17	Parathion Technical

3. Requests for voluntary cancellation of end-use product registrations. Several registrants have submitted letters of requests for immediate voluntary cancellation of their registrations for end-use pesticide products containing ethyl parathion. The registrants who signed the MOA requested for cancellation of their ethyl parathion end-use product registrations effective as of December 31, 2002. These cancellation requests are granted by EPA's cancellation order in this notice. The end-use product registrations for which cancellation was requested by MOA are identified in the following Table 3, and end-use product registrations for which cancellation was requested by separate letters of requests are identified in the following Table 4.

TABLE 3. — END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS BY MOA.

Company	Registration No.	Product Name
Cheminova, Inc.	67760–37	Parathion 4EC
	67760–38	Parathion 8EC
	67760–39	Ethyl-Methyl Parathion 6–3 EC

TABLE 4. — END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS BY LETTER.

Company	Registration No.	Product Name
Universal Cooperatives, Inc.	1386–646	Red Panther Parathion 8
Wilbur Ellis, Co.	2935–481	Parathion 4 Spray
	2935–483	Parathion 8 Aqua
Amvac, Chemical Co.	5481–435	Parathion 8
	5481–436	Parathion 4E
Helena Chemical	5905–513	Parathion 4E Emulsifiable Insecticide Concentrate
	5905–514	Parathion 8E Emulsifiable Insecticide Concentrate
	5905–515	Parathion - Methyl Parathion 6–3 Insecticide Concentrate
	5905–516	Helena Parathion 8 Flowable Insecticide Concentrate
Agriliance, LLC	9779–322	Parathion 8
Micro-Flo, Co.	51036–180	Micro Flo Co./Parathion 8E

III. Potential Actions Relative to Remaining End-Use Product Registrations

EPA is contemplating various enforcement and regulatory actions with respect to the remaining end-use product registrations after EPA grants the voluntary cancellation requests set forth in Unit II of this notice. These remaining registrations cite the manufacturing–use product listed in Table 2 as the source of active ingredient in these products. Because EPA will limit the sale, distribution and use of the existing stocks of this source with this order canceling its registration, production of these remaining end-use products may be illegal under the cancellation order or the current registrations for these end-use products. Accordingly, EPA may initiate appropriate enforcement actions to ensure that the remaining end-use products are not being produced illegally after the source is canceled. As shown in the Agency's revised risk assessment dated September 1999, EPA is concerned with the risks associated with the use of pesticide products containing ethyl parathion. Because of these concerns, EPA is contemplating initiating a proceeding to cancel these remaining registrations. The remaining end-use product registrations that may be subject to enforcement and regulatory actions discussed in this section are identified in the following Table 5.

TABLE 5. — END-USE PRODUCT REGISTRATIONS POTENTIALLY SUBJECT TO INVOLUNTARY CANCELLATION.

Company	Registration No.	Product Name
Drexel Chemical Co.	19713–322	Seis—Tres 6–3
	19713–323	Drexel Parathion 8
	19713–324	Ida Seis—Tres 6–3
	19713–325	Drexel Parathion 4EC

IV. Cancellation Order

Pursuant to FIFRA section 6(f)(1)(A), EPA hereby grants the requested voluntary product and use cancellations of the registrations ethyl parathion products as described in Unit II of this notice. Accordingly, any distribution, sale, or use of existing stocks in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit V of this notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

V. Existing Stocks Provisions

Pursuant to section 6(f) of FIFRA, EPA is granting the requests for voluntary product and use cancellations. For purposes of the cancellation order, the term ''existing stocks'' will be defined, pursuant to EPA's existing stocks policy published in the **Federal Register** at (56 FR 29362, June 26, 1991) (FRL–3846–4), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation. Any distribution, sale, or use of existing stocks after the effective date of the cancellation order that is not consistent with the terms of that order will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA.

A. Sale, Distribution and Use of Manufacturing–Use Products Imported into the United States prior to July 7, 2000

All sale, distribution, and use of existing stocks of manufacturing–use products imported into the United States prior to July 7, 2000 will not be lawful as of December 31, 2002, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal.

B. Sale and Distribution by Registrants of End-Use Products Subject to the MOA

All sale and distribution by the registrants of existing stocks of end-use products identified in Table 3 will not be lawful under FIFRA as of the effective date of their cancellations (i.e., December 31, 2002), except for the purposes of shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

C. Sale and Distribution by Registrants of End-Use Products not Subject to the MOA

All sale and distribution by the registrants of existing stocks of end-use products identified in Table 4 are not lawful under FIFRA as of the effective date of this cancellation order, except for the purposes of shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

D. Sale and Distribution of End-Use Products by Other Persons

All sale and distribution by persons other than the registrants of existing stocks of end-use products identified in Tables 3 and 4 will not be lawful under FIFRA as of August 31, 2003, except for the purposes of shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

E. Use of End-Use Products

All use of existing stocks of end-use products identified in Tables 3 and 4 will not be lawful under FIFRA as of October 31, 2003.

List of Subjects

Environmental protection, Memorandum of Agreement, Pesticides and pests.

Dated: August 31, 2001.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs

[FR Doc. 01–23003 Filed 9–12–01; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7054–6]

Proposed Administrative Cashout Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act; in Re: Beede Waste Oil Superfund Site, Plaistow, NH

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and projected future response costs concerning the Beede Waste Oil Superfund Site in Plaistow, New Hampshire with the settling parties listed in the Supplementary Information portion of this notice. The U.S. Environmental Protection Agency—Region I (EPA) is proposing to enter into an early de minimis settlement agreement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement, embodied in a CERCLA section 122(g) Administrative Order on Consent (''AOC''), is designed to resolve each settling party's liability at the Site for past work, past response costs and specified future work and response costs through covenants under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The proposed AOC requires the settling parties listed in the Supplementary Information section below to pay an aggregate total of approximately $1,651,082.40. For thirty (30) days following the date of publication of this notice, the EPA will receive written comments relating to the settlement. The EPA will consider all

comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The EPA's response to any comments received will be available for public inspection at the EPA Records Center, 1 Congress Street, Boston, MA 02114–2023 (Telephone Number: 617–918–1440).

DATE: Comments must be submitted on or before October 15, 2001.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Records Center, 1 Congress Street, Boston, MA 02114–2023. Please call 617–918–1440 to schedule an appointment. A copy of the proposed settlement may be obtained from Kristin Balzano, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114–2023 (Telephone Number: 617–918–1772). Comments should reference the Beede Waste Oil Superfund Site in Plaistow, New Hampshire and EPA Docket No. CERCLA–1–2001–0041 and should be addressed to Kristin Balzano, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114–2023.

FOR FURTHER INFORMATION CONTACT: Cindy Lewis, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114–2023 (Telephone Number: 617–918–1889).

SUPPLEMENTARY INFORMATION: The following is a list of the approximately 493 settling parties, including settling federal agencies, to the proposed settlement: 3A Auto Service Inc., A.F. German Company Inc., A J's Inc., A.R. Belli Inc., A&M Service, Inc., ABC Bus Company, ABC Relocation Services, Acorn Motors Inc., AGFA Corporation, AL LI Service Center, Alden Buick Pontiac, Alden Research Laboratory, Allen Harbor Marine Service Inc., Allen Mello Dodge Inc., Allied Auto Parts Company Inc., AL–N Auto Repair, Alpha Oil Company Inc., Amesbury Machine, Anderson-Chrysler Plymouth, Andrews Gunite Company Inc., Arc Source Inc., Archers Mobil, Art's Texaco, Atlantic Equipment & Leasing, August A. Busch & Company of MA, Autolab, Inc., Automotive Service Plus, Inc., Automotive Supply Associates Inc. d/b/a Sanel Auto Parts, Avenue Motor Mart Garage, Inc., B & T Construction Corporation, B.L. Oglivie's & Sons, Inc., Babb Motors, Bailey's Service Station Inc., Baker Cadillac Oldsmobile, Inc., Baldarelli Bros., Ball Square Auto Repair, Barry Transport, Inc., Bartlett's Garage Inc., Bateson Enterprises Inc., Bay View Realty Trust, Beal Companies LLP, Bellingham Lumber, Bentons Inc. d/b/a Northgate Mobil, Bernardi's Inc., Bezema Buick, Biondis Service Center, Bixby International Company, Black Swamp Garage Inc., Blue Circle Inc., Blue Line Garage, Bob Bonsaint & Sons, Bob Graham Auto Sales and Service Inc., Bob Lucey's Service Station Inc., Bob's Auto Repair, Bob Mariano Pontiac Jeep Eagle, Inc., Bob's Truck & Auto Repair, G. Bonazzoli & Sons Inc., Bonfiglioli's Auto Service Inc., Bonnell Motors, Inc., Charles Booth, Boston Properties, Boston Thermo King, Boucher's Automotive Machine Shop Inc., Brewer Petroleum Service, Inc., Brick Ends Farm Inc., Brickstone Properties, Inc., Brigham Gill Motorcars Inc. d/b/a Brigham-Gill Jeep, British Petroleum Exploration & Gas, Brooks Machine & Equipment Company Inc., John Brown d/b/a J&K Auto, Brown's Garage & Service Station Inc., Brox Industries, Bruce's Auto Service, Buddenhagaen Inc. d/b/a Wilson & Rand Service Station, Burt's Cycle Shop Inc., C&L Auto Repair and Parts Inc., C&R Tire Company Inc., C.C. Fillmore Truck Repair Inc., C.K. Smith & Company, Inc., Cambridge Landscape Company, Cambridge Street Auto Body, Cape Pond Ice Company, Inc., Carlos Auto Body, Catalano Bros Inc., Caterair International Corporation, Central Dodge Motors of Norwood, Central Welding Company, Inc., Century Tire, Certified Foreign Repair, Chadwick-BaRoss, Charles River Laboratories, Inc., Charlie's Auto Body, Checkoway Oil Company d/b/a Holmes Tire, Chick Packaging, Inc., Christmas Motors, Inc., City of Chelsea, MA, City of Gardner, MA, City of Laconia, NH, City of Malden, MA, City of Medford, MA, City of Melrose, MA, City of Nashua, NH, City of Revere, MA, City of Worcester, MA, Clampa-All Corp., Clark & White Inc., Donald J. Clark, Coca-Cola Bottling of Lowell, Coca-Cola Bottling of Northern New England, Inc. (for Seacoast Coca-Cola Bottling Company), Collins Crane and Rigging Service Inc., Colonial Auto Body & Sales Company, Inc., Colvin's Inc., Compressed Air Systems, Concord-Carlisle Regional School District, Concordia, Inc., Congregational Retirement Homes, Inc., Coots Bros. Inc., Courier Westford Inc., Crystal Springs Golf, Inc., John P. Curley d/b/a Curley's Auto Repair, Custom Auto Repair, Inc., Custom Service Inc., Cypress Equipment Corp., D&R Auto Repairs d/b/a Helco Automotive, D&R General Contracting Inc., D&S Service Station, Inc., D.F. Clark Inc., Dalzell Motor Sales, Inc., Danversport Yacht Club, Davis Auto Electric, Deck House, Inc., Dedham Country Day School, Dedham Shell Inc. d/b/a Marshfield Auto Center/Pembroke Shell, DeLoury Construction Company, Inc., Dennisport Mobil, DeVincent Associates Limited Partnership, Dick's Foreign Car Service, Distrigas of Massachusetts LLC, Don & Dave's Automotive Inc., Don Allen Auto Service Inc., Don Wheeler Construction, Inc., Donald F. Knowles, Inc., Don's Auto Repair, Don's Automotive, Doyle's Exxon Station, Draper Energy Co., Dror Village Inc. (for Village Shell), Duarte Motors Inc., Durand Chevrolet, Inc., E R Pickett Company Inc., East Coast Auto Sales, Eastern Propane Gas, Inc., Eastland Motor Service Corporation, Eddie Bailey's Garage, Inc., Ed's Service Center, Inc., Ed's Service Inc., Elie Investment Management Company d/b/a Groveland Getty, Emerson Auto Service Inc., Energy Retailers, Inc., Ernest T. Pappas d/b/a Central Ave. Auto Repair, European Car Doctors Inc., Excavating Enterprises, Inc., F B Rich & Sons, Inc., Falmouth Motor Car Co., Far East Automotive Services, Inc., Federal Furnace Cranberry, Fenway Texaco Inc., Ferry's Automotive Inc., Fidelity Sportwear Inc., James Filandrianos, Inc. d/b/a Oak Square Sunoco, First C.G.L.P., Fitchburg Colonial Aviation, Flatley Company, Foilmark Manufacturing Corp., Foreign Autopart, Inc. (n/k/a Autopart International, Inc.), Framingham Chrysler Plymouth, Inc., Framingham State College, Frazee Automotive Inc., Fred Hubbard's Gulf, Fredrickson Bros. Inc., Freeman Cycles, Inc., Furlong's Auto Repair, Galloway's Grocerette, Gaskell's Service Station & Muffler Shop, General Electric Company, George DeCoste & Sons Inc., Gerber Radio Supply d/b/a Gerber Electronics, Getov Machine Inc., Getty Properties Corporation, Ghasadafa, Inc. d/b/a Main Street Shell, Goldberg Energy Management, Gordon Conwell Thedoycs/Seminary (Gordon Conwell Theological Seminary), Granite State Tire & Battery Co., Inc., Granz Inc., John Grappone Inc. d/b/a Grappone Ford, Grattan Line Construction Corporation, Gray Excavation, Inc., Great Road Dodge, Inc., Greenwood Fire Apparatus, Inc., Grossman Companies, Grota's Motors, Inc., R.S. Guerette Corporation, H.H. Snow & Sons, Inc., Hallamore Corporation, Hancock Village LLC, Hansen Marine Engineering, Inc., Harold Lunnin d/b/a Hap's Auto Service, Harborside Marine Service, Hargreaves Garage, Havencraft of New England, Haverhill Golf and Country Club, Henry J. Pleiss, Jr. d/b/a Hank's Garage, Hewlett Packard Company, High Street Service Inc., Highland Service

Center of Newton Inc., Hodgden-Noyes Buick-Pontiac GMC Truck Inc., Richard Willis Wheeler d/b/a Hudson Cycle Center, Inc., Hudson's Outboard Inc., Hy Test Oil Co., Inc., Ideal Tape Company (a division of American Biltrite Inc.), Imperia Corporation, Imports Limited Inc., Ingersoll Rand Company, Ipswich Outboard Motor & Boat Inc., Ira Korean Cars LLC d/b/a Ira Hyundai, J&M Santoian Realty Trust, J.A. Polito & Sons, Inc., J.R.A. Auto Repair, Inc., J.R. Service (n/k/a Dave's Automotive), J. Schwartz Motor Transportation Inc., J.J. Donovan & Sons, Inc., Jackson Lumber & Millwork Co., Inc., James R. Lee d/b/a Lee Auto Repair, James Russell Engineering Works, Inc., Jamieson Services Inc. d/b/a Concord Avenue Mobil, Jefferson Rubber Works, Jefferson Service Station, Inc., Jiffy Lube International Inc. (for Pennzoil-Quaker State Company), Jiffy Lube International Inc., John T. Clark & Son of Boston, Inc., John's Auto Repair Service, Inc., Kagan's Service Station, Inc., KAO Infosystems Company, Kayem Foods Inc., Kingsley Orchard Realty Corp., Kinney's Garage, Inc., Kyle Equipment Company Inc., L. Knife & Son, Inc., LAB Motors Ltd., Lance Buick Pontiac-Cadillac, Landry Hire-A-Tool & Supply Co., Larry Palmer's Mobil, Lawless Chrysler Plymouth Inc., Lawrence Pumps, Inc., Lawrence Tank Inc., Lee Imported Cars, Inc., Leo J. Fiori & Sons, Inc., Levis Realty, Liberty Chevrolet, Inc., Limbach Company, Litecontrol Corp., Londonderry Car Wash Inc. d/b/a Londonderry Car Care, Loomis Fargo & Co., Louie's Service Center, Magnolia Service Station, Mahoney Oil Company, Inc., Majestic Cars, Malio Auto Service, Malone Fence Co. Inc., Manley-Berenson Associates, Inc., Marblehead Municipal Light Department, Marine Services and Electronics Inc., Martel Welding & Sons, Inc., Martin Welding Northeast, Inc., Masconomet Regional School District, Mason Tanning Co., Mass Ave. Firestone, Inc., Mastria Buick Pontiac GMC Truck Company Inc., McGovern Auto, McKinney Artesian Well & Pump Supply, Inc., Mears Trust, Mecca Motors Inc., Mello's Service Station, Merrimack Auto Center, Merrimack Street Garage, Inc., Ronald C. Meservey, Methuen Getty, Inc., Mibrock, Inc. d/b/a Brockton Midas Muffler & Brake Shop, Middlesex Auto Repair, Mihold Inc. d/b/a Fall River Midas Muffler & Brake Shop, Mike Mobil, Mike's Auto Repair, Mike's Garage, Miles River Sand & Gravel Inc., Miller Auto Service Inc., Miller's Garage, Milton Garage, Inc., Miman Inc. d/b/a Laconia Midas Muffler & Brake Shop, Mirak Chevrolet, Miriam Hospital, Mister Tire Inc., Modern Continental Construction Co., Inc., Modern Continental Equipment Co., Inc., Mongony Service Station, Donald E.W. Morgan, Jr. d/b/a Meadow Park Motors, Morton International, Inc., Motiva Enterprises LLC, Motor Mart Auto Sales, Inc., Moulton Company, Murray Hills Construction, Nardone Sand & Gravel Co., Nardone Sand & Gravel, Narragansett Bay Commission, Nashoba Valley Technical High School, Nault's Lincoln-Mercury Inc., New England Sealcoating Co., Inc., New Hampshire Electric Cooperative, Inc., New Hampshire Peterbilt Inc., Newman Service Station, Newtonville Exxon, Newtonville Sunoco Service Station, Inc., NHE Associates Inc. d/b/a Motor Town NAPA Auto Parts, Nick Dee Chevrolet, Inc., Nickerson Service Center, Norlantic Diesel Inc., North Shore Recycled Fibers, Northeast Metropolitan Regional Vocational School District, Northland Willette Inc., Northshore Mall LP, Northwest Airlines, Inc., Norwood Central Gas & Repair Corp., Nyman Manufacturing Company Inc. (n/k/a Huhtamaki-East Providence, Inc.), Old Colony Regional Vocational Technical High School District, Otis Elevator Company (a subsidiary of United Technologies Corporation), Palmer's Garage, Inc., Paquette Service, Park Transportation Corporation, Inc., Paroto Equipment Company, Inc., Paul's Auto Service Inc., Peabody Auto Clinic, Pembroke Automotive Service, Inc., Pepsi-Cola Metropolitan Bottling Company Inc., Persons Concrete, Peter D. Dickman, Peter's Auto Repair, Inc., Petroleum Heat & Power Company Inc., Phillips & Lee Gulf Station Inc., Phillips Academy (Andover), Phill's Service & Auto Body, Pilgrim Screw Corporation, Pioneer Garage Company Inc., Plumb House Corporation, Plympton Sand & Gravel Corporation, Policy Well & Pump Company Inc., Powder Tech Associates, Inc., Powell Corporation, Power Equipment Company, George E. Power, Jr., Inc. d/b/a Johnny's Texaco Station, Previtt Oil Company, Inc., Process Cooling Systems Inc., PT Marine Inc. d/b/a Ryder Cove Boat Yard, Quest Diagnostics Incorporated, Quincy Automatic Transmission, R&A Auto Service, R&R American Service Station Inc., R.C. Olsen Cadillac, Inc., R.E. Walters Inc., R.H. Long Motor Sales Company, R.M. Towing Company, RAB Old Right, Inc., Radford Trans, Inc., Ralph Mahoney & Sons Inc., Ralph's Truck Sales Inc., Rauseo's Auto Inc., Ray Plastic Inc., Read Sand & Gravel, Inc., Reading Municipal Light Department, Regal Motors, Regan & Stapleton Inc., Ricky Smith Pontiac, Inc., Rita M. Sherman, River Street Automotive Center, Robbie Fuels, Inc., Robert B. Our Company, Rollen Ltd. d/b/a Direct Tire and Auto Service, James R. Rosencrantz & Sons, Inc., Rosenfeld Concrete Corporation, Route 38 Ltd. d/b/a Midas Muffler, Rowley Ready-Mix Inc., S. Benedetto Sons Inc., Sacco's, Saint Elizabeth's Medical Center of Boston, Inc., Salem and Beverly Water Supply Board, Salvadore Auto Exchange, Inc., Salvation Army Adult Rehabilitation Center, Saugus Heavy Equipment Repair, Inc., Sawin Motors Inc., Schmidt Equipment, Inc., Senter Brothers, Inc., Shawsheen Valley Technical High School, Shea Concrete Products, Inc., Shell Oil Company, Smith's Sales Inc., Sonny D. Construction, Inc., South Avenue Motors Inc., South Essex Sewerage District, South Shore Auto Parts Co., Inc., Speedy Lube Inc., Spir-it Inc., St. James Company LP, St. Joseph Hospital of Nashua, N.H., Standley's Garage, Inc., Star Auto Service, Star Fisheries Corporation, Starkey Ford, Stedt Hydraulic Crane Corp., Steve's Automotive, Stewie's Oil Inc., Sun Transportation Inc., Sunoco Incorporated (R&M), Superior Auto Sales & Service, Swanson Pontiac Buick GMC, Truck Inc., Sylvester A. Ray Inc., T.E. Andresen, Inc., Tate Bros. Paving Co., Inc., Tate's Garage, Ted's Farm Equipment Inc., The Doctor Inc., Thomas Glaser d/b/a Automotion, Thorny Lea Golf Club, Inc., Timberlane Regional School District, Tire Specialist, Inc., Tom Chevrolet, Inc., Tommy Jenkins, Inc., Toothakers Service Station, Torres Service Station, Town of Arlington, MA, Town of Belmont, MA, Town of Essex, MA, Town of Framingham, MA, Town of Halifax, MA, Town of Holden, MA, Town of Hopedale, MA, Town of Hull, MA, Town of Manchester-by-the-Sea, MA, Town of Merrimac, MA, Town of Middleton, MA, Town of North Reading, MA, Town of Pembroke, MA, Town of Rye, NH, Town of Sandwich, MA, Town of South Easton, MA, Town of Stoneham, MA, Town of Topsfield, MA, Town of Watertown, MA, Town of Weston, MA, Town of Winthrop, MA, Trailblazer Kawasaki Inc. and Trailsport Cycles Inc. d/b/a North Reading Honda Kawasaki, Triangle Transmission & Brake, Truckers Maintenance Service, TruGreen Limited Partnership, TruGreen LP, Tucker's Auto Supply Inc., Tully Buick Pontiac Company, Inc. d/b/a Tully Buick et al., Tuxbury's Garage, Uhlman Excavating Co., Umbro and Sons Construction Company, Union Ave. Automotive (f/k/a Union Avenue Esso & Union Avenue Exxon), Union Coal & Oil Co. Inc., United Airlines Inc., United States Army Reserve (Marine Corps), United States Department of the Interior (for Parker River NWR, Cape Cod NS, National Park Serv.(Lowell), Lowell NHP, Cape Cod NS), UTEC Constructors Inc., Valu-Ent Inc. d/b/a Webnik Motors, Village Garage/Lee F. Mainhold, Volpone Towing Services, Inc., Walsh's Garage, Waltham Central School Transportation Inc., Washington Mills Transport Corporation, Waugh's Inc., Waverley Square Service, Inc., Wayne & Company, Inc., Wheels Corporation d/b/a Bud's Sunoco, Whitehall Company, LTD., John M. Wilkes d/b/a Wilkes Mobil, Willwerth Enterprises, Inc., Wilmington Cold Storage Inc., Winco Inc., William Wooding d/b/a Wooding's Garage, Woodside Corporation, Woodville Service, WWF Paper Corporation New England, and Yankee Pine Corporation.

In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, notice is hereby given of a proposed early de minimis settlement agreement under section 122(g) of CERCLA concerning the Beede Waste Oil Superfund Site in Plaistow, NH. The settlement was approved by EPA Region I, subject to review by the public pursuant to this Notice.

The proposed settlement has been approved by the United States Department of Justice. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

Dated: September 4, 2001.

Patricia L. Meaney,

Director, Office of Site Remediation and Restoration, EPA—Region I.

[FR Doc. 01–22909 Filed 9–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7055–6]

Clean Water Act Section 303(d): Availability of Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record file for TMDLs, prepared by EPA Region 6, addressing pesticides listings in Louisiana's Mermentau and Vermilion/Teche river basins. These TMDLs include 22 waters listed with pesticides as a cause of impairment under section 303(d) of the Clean Water Act (CWA). EPA prepared these TMDLs in response to a Court Order dated October 1, 1999, in the lawsuit *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.). Under this court order, EPA is required to prepare TMDLs when needed for waters on the Louisiana 1998 section 303(d) list by December 31, 2007.

DATES: Comments on the TMDLs must be submitted in writing to EPA on or before October 15, 2001.

ADDRESSES: Comments on the TMDLs should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at (214) 665–7513. The administrative record file for these TMDLs is available for public inspection at this address as well. Copies of the TMDLs and their respective calculations may be viewed at *www.epa.gov/region6/water/tmdl.htm.* The administrative record files may be obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. Discussion of the court order may be found at 65 FR 54032 (September 6, 2000).

EPA Seeks Comments on 27 TMDLs

By this notice EPA is seeking comments on the following 23 pesticides TMDLs on the 1999 court-ordered 303(d) list within the Mermentau and Vermilion/Teche basins and 4 newly identified TMDLs for waters located within the Mermentau basin. The pesticides of concern identified were carbofuran and fipronil.

Subsegment	Waterbody name	Pollutants
050101	Bayou Des Cannes—Headwaters to Mermentau River	Pesticides (carbofuran & fipronil)
050701	Grand Lake	Pesticides (carbofuran)
050702	Intracoastal Waterway	Pesticides (carbofuran)
050901	Bays and Gulf Waters to State 3-mile Limit	Pesticides (carbofuran)
060205	Bayou Teche—Headwaters At Bayou Courtableau to I–10	Pesticides (carbofuran)
060207	Bayou des Glaises Diversion Canal	Pesticides (carbofuran)
060301	Bayou Teche—I–10 to Keystone Locks and Dam	Pesticides (carbofuran)
060401	Bayou Teche—Keystone Locks and Dam to Charenton Canal	Pesticides (carbofuran)
060701	Tete Bayou	Pesticides (carbofuran)
060801	Vermilion River—Headwaters at Bayou Fusilier-Bourbeaux Junction to New Flanders (Ambassador Caffery Bridge At Hwy 3073).	Pesticides (carbofuran)
060802	Vermilion River—From New Flanders (Ambassador Caffery Bridge) at Hwy 3073 to Intracoastal Waterway.	Pesticides (carbofuran)
060803	Vermilion River Cutoff	Pesticides (carbofuran)
060901	Bayou Petite Anse	Pesticides (carbofuran)
060902	Bayou Carlin (Delcambre Canal)—Lake Peigneur to Bayou Petite Anse (Estuarine).	Pesticides (carbofuran)
060903	Bayou Tigre	Pesticides (carbofuran)
060904	Vermilion River B890 Basin New Iberia Southern Drainage Canal	Pesticides (carbofuran)
060906	Intracoastal Waterway	Pesticides (carbofuran)
060907	Franklin Canal	Pesticides (carbofuran)
060910	Boston Canal and Associated Canals (Estuarine)	Pesticides (carbofuran)
060911	Vermilion-Teche River Basin	Pesticides (carbofuran)
061101	Bayou Petite Anse	Pesticides (carbofuran)

Subsegment	Waterbody name	Pollutants
061102	Intracoastal Waterway	Pesticides (carbofuran)
050201	Bayou Plaquemine Brule—headwaters to Bayou Des Cannes	Pesticides (fipronil)
050401	Mermentau River—origin to Lake Arthur	Pesticides (fipronil)
050501	Bayou Queue de Tortue—headwaters to Mermentau River	Pesticides (fipronil)
050603	Bayou Chene—includes Bayou Grand Marais	Pesticides (fipronil)

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the calculations for these TMDLs, or any other comments relevant to these TMDLs. EPA will review all data and information submitted during the public comment period and revise the TMDLs where appropriate. EPA will then forward the TMDLs to the Court and the Louisiana Department of Environmental Quality (LDEQ). LDEQ will incorporate the TMDLs into its current water quality management plan.

Dated: September 4, 2001.

Richard G. Hoppers,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 01–22910 Filed 9–12–01; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0093]

Submission for OMB Review; Comment Request Entitled Transportation Discrepancy Report, Standard Form 361

AGENCY: General Services Administration (GSA).

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Transportation Discrepancy Report, Standard Form 361. A request for public comments was published at 66 FR 34683, June 29, 2001. No comments were received.

DATES: Comments may be submitted on or before October 15, 2001.

FOR FURTHER INFORMATION CONTACT: Richard J. Johnson, Jr., National Customer Service Center, Federal Supply Service, GSA (816) 926–2932.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0093, concerning Transportation Discrepancy Report, Standard Form 361. This form is prepared by Government shippers or receivers to document loss, damage, or other discrepancy resulting from the movement of freight by commercial transportation companies.

B. Annual Reporting Burden.

Respondents: 1,434.
Annual Responses: 1,434.
Average Hours Per Response: 1.
Burden Hours: 1.434.

Obtaining Copies of Proposals.

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0093 Transportation Discrepancy Report, Standard Form 361, in all correspondence.

Dated: September 7, 2001.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy

[FR Doc. 01–23036 Filed 9–12–01; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

White House Commission on Complementary and Alternative Medicine Policy; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the White House Commission on Complementary and Alternative Medicine Policy.

The purpose of this public meeting is to convene the Commission to discuss possible Federal policy regarding complementary and alternative medicine (CAM). The main focus of the meeting is the discussion of key issues before the Commission and the development of draft recommendations that may be included in the Final Report of the White House Commission on Complementary and Alternative Medicine Policy. Major issue areas to be considered by the Commission prior to preparation of its Final Report include the following: Coordination of CAM Research; Access to and Delivery of CAM Practices and Products; Coverage and Reimbursement for CAM Practices and Products; Training and Education of Health Care Practitioners in CAM; Development and Dissemination of CAM Information for Health Care Providers and the Public; CAM in Wellness, Self-Care, Health Promotion, and Disease Prevention; Coordinating and Centralizing Private Sector and Federal Sector CAM Efforts; and the Definition of CAM and Guiding Principles for the preparation of the Final Report from the Commission. Comments received at the meeting may be used by the Commission to prepare the Report to the President as required by the Executive Order.

Opportunities for oral statements by the public will be provided on October 5, from 5 p.m.–6 p.m. (Time approximate).

Name of Committee: The White House Commission on Complementary and Alternative Medicine Policy.

Date: October 4–6, 2001.

Time: October 4—8 a.m.–6—p.m.; October 5—8 a.m.–6 p.m.; October 6—8:30 a.m.–12:30 p.m.

Place: Neuroscience Office Building, National Institutes of Health, Conference Rooms C–D, 6001 Executive Boulevard, Bethesda, MD 20892.

*Contact Persons:*Michele M. Chang, CMT, MPH, Executive Secretary; OR Stephen C. Groft, Pharm.D., Executive Director, 6707 Democracy Boulevard, Room 880, MSC–5467, Bethesda, MD 20892–5467, Phone: (301) 435–7592, Fax: (301) 480–1691, E-mail: *WHCCAMP@mail.nih.gov.*

Because of the need to obtain the views of the public on these issues as soon as possible and because of the early deadline for the report required of the Commission, this notice is being provided at the earliest possible time.

Supplementary Information: The White House Commission on Complementary and Alternative Medicine Policy was established on March 7, 2000 by Presidential Executive Order 13147. The mission of the White House Commission on Complementary and Alternative Medicine Policy is to provide a report, through the Secretary of the Department of Health and Human Services, on legislative and administrative recommendations for assuring that public policy maximizes the benefits of complementary and alternative medicine to Americans.

Public Participation

The meeting is open to the public with attendance limited to the availability of space on a first come, first served basis. Members of the public who wish to present oral comments may register by faxing a request to register at 301–480–1691 or by accessing the website of the Commission at *http://whccamp.hhs.gov* no later than September 27, 2001.

Oral comments will be limited to five minutes, three minutes to make a statement and two minutes to respond to questions from Commission members. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotted may also be limited by the number of registrants. Priority may be given to participants who have not yet addressed the Commission at previous meetings. All requests to register should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the area of interest or issue to be addressed.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits, and at the Chairperson's discretion. Individuals unable to attend the meeting, or any interested parties, may send written comments by mail, fax, or electronically to the staff office of the Commission for inclusion in the public record.

When mailing or faxing written comments, please provide your comments, if possible, as an electronic version on a diskette. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact the Commission staff at the address or telephone number listed above no later than September 27, 2001.

Dated: September 7, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–23011 Filed 9–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Management and Budget; Statement of Delegation

Notice is hereby given that I have delegated to the Assistant Secretary for Management and Budget (ASMB), with authority to redelegate, the responsibility to coordinate the implementation and enforcement of Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794d, as amended, relating to employment and electronic and information technology programs and activities conducted by the Department.

Pursuant to this delegation, the Assistant Secretary for Management and Budget shall have the authority to:

(1) Accept and investigate employment discrimination complaints filed by Federal employees and applicants for employment at the Department alleging a failure to comply with Section 508 consistent with the procedures at 29 CFR part 1614;

(2) Provide technical assistance to other departmental components regarding the processing and resolution of Section 508 employment discrimination complaints;

(3) Evaluate the effectiveness of Section 508 employment discrimination complaint processing and provide reports to appropriate oversight organizations; and

(4) Initiate such other actions as may be necessary to facilitate and ensure compliance with Section 508 of the Rehabilitation Act consistent with the procedures at 29 CFR part 1614.

This delegation is effective immediately.

Dated: August 30, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–22957 Filed 9–12–01; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office for Civil Rights; Statement of Delegation

Notice is hereby given that I have delegated to the Director of the Office for Civil Rights (OCR), with authority to redelegate, the responsibility to coordinate the implementation and enforcement of Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794d, as amended, relating to programs and activities conducted by the Department.

Pursuant to this delegation, the Director of the office for Civil Rights shall have the authority to:

(1) accept and investigate complaints, other than employment discrimination complaints of employees or applicants for employment at the Department, filed by individuals alleging a failure to comply with Section 508 of the Rehabilitation Act consistent with the procedures at 45 CFR part 85;

(2) provide technical assistance to other departmental components regarding the processing and resolution of Section 508 non-employment discrimination complaints;

(3) evaluate the effectiveness of Section 508 complaint processing by OCR and provide reports to appropriate oversight organizations; and

(4) initiate such other actions as may be necessary to facilitate and ensure compliance with Section 508 of the Rehabilitation Act consistent with the procedures at 45 CFR part 85.

If the OCR Director chooses to redelegate this authority, the OCR Director will maintain primary responsibility and accountability for implementation of this section.

This delegation is effective immediately.

Dated: August 30, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–22958 Filed 9–12–01; 8:45 am]

BILLING CODE 4153–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01148]

Capacity-Building Assistance (CBA) To Develop and Implement Effective HIV/AIDS Prevention Education Programs for South Africa Trade Unions; Notice of Availability of Funds; Amendment

A notice announcing the availability of fiscal year (FY) 2001 funds for a cooperative agreement program to develop and implement effective HIV/AIDS prevention education programs for South Africa Trade Unions, was published in the **Federal Register** on August 21, 2001, [Vol. 66, No. 162, Page 43872]. The notice is amended as follows:

On page 43872, second column, under Submission and Deadline, delete: ''On or before September 7, 2001, submit the application to the Grants Management

Specialist identified in the Where to Obtain Additional Information of this announcement.'' and change to ''On or before October 10, 2001, submit the application to the Grants Management Specialist identified in the Where to Obtain Additional Information of this announcement.''

Dated: September 7, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 01–22976 Filed 9–12–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Medicare and Medicaid Services

[Document Identifier: CMS–R–13]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (formerly the Health Care Financing Administration), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Conditions of Coverage for Organ Procurement Organizations (OPOs) and Supporting Regulations in 42 CFR, Section 486.301–.325; *Form No.:* CMS–R–13 (OMB# 0938–0688); *Use:* OPOs are required to submit accurate data to CMS concerning population and information on donors and organs on an annual basis in order to assure maximum effectiveness in the procurement and distribution of organs.; *Frequency:* Annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 59; *Total Annual Responses:* 59; *Total Annual Hours:* 1.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326, Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 4, 2001.

John P. Burke III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 01–22951 Filed 9–12–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0384]

Preparation for Global Harmonization Task Force Conference in Barcelona, Spain, Including a Discussion of Guidance Proposed for Comment and Currently Under Development and Possibilities for New Topics; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled ''Preparation for Global Harmonization Task Force Conference in Barcelona, Spain, Including a Discussion of Guidance Proposed for Comment and Currently Under Development and Possibilities for New Topics.'' The purpose of this meeting is to solicit information and receive comments on FDA's future participation in the Global Harmonization Task Force (GHTF) as well as the upcoming meetings in Barcelona, Spain. The topics to be discussed are an overview of GHTF, guidance proposed for comment and currently under development, and possibilities for new topics. This meeting is being held to solicit public input prior to the next meeting of the GHTF Steering Committee and Study Groups in Barcelona, Spain, from October 11 to 16, 2001, at which discussion of the guidance proposed for comment and under development and possible new topics will be continued.

Comments: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments are to be identified with the docket number found in brackets in the heading of this document.

Date and Time: The public meeting will be held on October 1, 2001, from 1:30 p.m. to 4:30 p.m.

Location: The public meeting will be held at 5630 Fishers Lane, rm. 1056, Rockville, MD.

Contact: Kimberly Topper, Center for Drug Evaluation and Research, Food and Drug Administration, 5630 Fishers Lane, Rockville, MD 20852, 301–827–7001, FAX 301–827–6801, or e-mail: Topperk@cder.fda.gov.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm or organization name, address, telephone, and fax number), and written material and requests to make oral presentations to the contact person by September 26, 2001.

If you need special accommodations due to a disability, please contact Kimberly Topper at least 7 days in advance.

SUPPLEMENTARY INFORMATION:

I. Background

The GHTF was established in 1992 as a joint regulatory/industry project to encourage convergence in regulatory practices related to ensuring the safety, effectiveness/performance and quality of medical devices; promote technological innovation; and facilitate international trade. The GHTF works to achieve these objectives by disseminating guidance documents on basic regulatory practices. These documents, which are developed by four different GHTF Study Groups, can be adopted/implemented by member national regulatory authorities. Other national regulatory authorities that are not GHTF members also are encouraged to adopt and implement GHTF guidance documents.

In recent years, regulatory authorities and industry associations have undertaken many important initiatives to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization. FDA is committed to seeking scientifically based harmonized technical procedures for medical device regulation. One of the goals of harmonization is to identify similarities and differences in technical requirements for medical devices, increase the similarities, and reduce the differences. The GHTF was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives.

The GHTF is concerned with harmonization among three regions: the European Union, Asia-Pacific, and North America. The members of the GHTF are the European Union, Australia, Japan, Canada, and the United States. The GHTF Steering Committee is composed of four regulatory and four industry representatives from each region for a total of 12 regulatory and 12 industry representatives. The secretariat rotates from one region to another every 3 years. The Therapeutic Goods Administration of Australia currently serves as the secretariat for GHTF. Health Canada previously served as the secretariat. The Ministry of Health and Welfare of Japan will serve as the next secretariat.

GHTF study groups develop guidance documents on device regulation. There are currently four study groups: Study Group 1—premarket issues; Study Group 2—postmarket vigilance; Study Group 3—quality systems; and Study Group 4—auditing of quality systems.

The GHTF process is intended to achieve harmonization of the technical requirements for approval or clearance of medical devices, quality system requirements, procedures for auditing quality systems, and postmarket vigilance in the three regions. Information about the GHTF, its structure, proposed and final study group guidance documents, and the upcoming conference in Barcelona, Spain, can be found on the Internet at http://www.ghtf.org.

II. Issues To Be Discussed at the Public Meeting

The issues to be discussed include the following: (1) GHTF overview and procedures, (2) overview of GHTF Study Group work, (3) medical device nomenclature, and (4) possibilities for new topics.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Oral presentations from the public will be scheduled. Time allotted for oral presentations may be limited to 10 minutes. Anyone desiring to make an oral presentation should notify the contact person by September 20, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the name and address, phone number, fax and e-mail of the proposed participant, and an indication of the approximate time requested to make the presentation.

The agenda for the public meeting will be available on September 17, 2001, at the Dockets Management Branch (address above) under Docket No. 01N–0384.

Transcripts: A transcript of the meeting will be posted on the Internet at: http://www.fda.gov/ohrms/dockets/dockets/docwhatsnew.htm under Docket No. 01N–0384. A transcript of the meeting also may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: September 6, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–22941 Filed 9–12–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Phase II (SBIR)—Internet-Based Tools to Enhance Use of Online Health Resources.

Date: September 13, 2001.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, Executive Plaza North Building, Conference Room C, 6130 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Kirt Vener, PhD, Branch Chief, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6166 Executive Boulevard, Room 8061, Bethesda, MD 20892, (301) 496–7174.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 7, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–23010 Filed 9–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel. Research Infrastructure.

Date: September 5–6, 2001.

Time: September 5, 2001, 8:30 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Marriott Crystal City, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contract Person: C. William Angus, PhD., Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965 301/435–0812, angusw@ncrr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93,333; 93,371, Biomedical Technology; 93,389, Research Infrastructure, National Institutes of Health, HHS)

Dated: September 05, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–23018 Filed 9–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–15, Review of R13 Grants.

Date: October 3, 2001.

Time: 11 a.m to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room H, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, RM. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–03, Review of P01, Applicant Interview.

Date: October 21–22, 2001.

Time: 8 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–27, Review of R13 Grants.

Date: October 22, 2001.

Time: 3:30 p.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room H, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, RM. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–23, Review of R44 Grants.

Date: October 31, 2001.

Time: 11:30 a.m to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Bldg., Conf. Rms. A & D, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–13, Review of R13 Grants.

Date: October 31, 2001.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room E½, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD., Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–02, Review of K12 Grants.

Date: November 1, 2001.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room H, Bethesda, MD 20892 (Telephone Confernece Call).

Contact Person: H. George Hausch, PhD., Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–21, Review of R44 Grants.

Date: November 5, 2001.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room E½, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–04, Review of PO1, Applicant Interview.

Date: November 14–15, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Yasaman Shirazi, PhD., Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Empahsis Panel 02–28, Review of R42 Grant.

Date: November 20, 2001.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room H, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–08, Review of P01 Grant, Applicant Interview.

Date: November 29–30, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Yasaman Shirazi, PhD, Scientific Review Administator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892 (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Disease and Disorders Research, National Institutes of Health, HHS)

Dated: September 7, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–23009 Filed 9–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: September 25, 2001.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd., DSR Conf. Rm., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hameed Khan, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: September 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–23012 Filed 9–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee.

Date: October 10–12, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, Washington, DC 20036.

Contact Person: Melissa Stick, PHD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–23013 Filed 9–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDCR Special Grants Review Committee, Review of R03, F30, K08 Grants.

Date: October 18–19, 2001.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yujing Liu, PhD, MD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–23014 Filed 9–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of RFA ES 0–001—Transition to Independent Positions (K22s).

Date: October 9–10, 2001.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Governors Inn, I–40 & Davis Dr., Exit 280, Research Triangle Park, NC 27709.

Contact Person: Linda K Bass, PhD., Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of RFP NIH–ES–01–09—Studies of Chemical Disposition in Mammals.

Date: October 9, 2001.

Time: 10:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Zoe E Huang, MD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institutes of Environmental Health Sciences, P.O. Box 12233, MD/EC–30, Research Triangle, Park, NC 27709, 919/541–4964.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of RFP NIH–EX–01–02—DNA Isolation and Molecular Analysis

Date: October 14, 2001.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institutes of Environmental Health Sciences, P.O. Box 12233, MD/EC–30, Research Triangle Park, NC 27709, 919/541–4964.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: September 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–23015 Filed 9–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: October 2–3, 2001.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.

Contact Person: David I. Sommers, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–23017 Filed 9–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: October 22–23, 2001.

Time: October 22, 2001, 8 am to adjournment.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave. NW., Washington, DC 20007.

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, *gm145a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 5, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–23019 Filed 9–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: September 18, 2001.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeanne N. Ketley, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: September 24, 2001.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Prabha L. Atreya, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–8367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: September 26, 2001.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, 301–435–1715, ngas@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: September 26–28, 2001.

Time: 7:30 p.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications..

Place: Ritz-Carlton Hotel, Tysons Corner, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, 301–435–1217, *byrnesn@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–23016 Filed 9–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–65]

Notice of Submission of Proposed Information Collection to OMB; State Community Development Block Grant (CDBG) Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 15, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0085) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, OFfice of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estiimate of the total number of hours needed to prepare the information submissions including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: State Community Development Block Grant (CDBG) Program.

OMB Approval Number: 2506–0085.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: State CDBG Program requires states to submit to HUD a Final Statement, Performance and Evaluation Report (PER), and maintain records to statutory compliance.

Respondents: Federal Government, State, local or tribal government.

Frequency of Submission: On occasion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	50		1		2148		107,400

Total Estimated Burden Hours: 107,400.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 30, 2001.

Wayne Eddins,

Departmental Reports Management Office, Office of the Chief Information Officer.

[FR Doc. 01–22949 Filed 9–12–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–66]

Notice of Submission of Proposed Information Collection to OMB; Data Collection for The Interim Impact Evaluation for the Moving to Opportunity Demonstration

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 15, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Data Collection for The Interim Impact Evaluation for the Moving to Opportunity Demonstration.

OMB Approval Number: 2528–XXXX.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This request is for the clearance of several survey instruments for the Interim Evaluation of the Moving to Opportunity (MTO) demonstration program. MTO is a unique experimental research demonstration designed to learn whether moving from a high-poverty neighborhood to a low-poverty neighborhood significantly improves the social and economic prospects of poor families. This data collection is necessary to measure impacts approximately 5-years after families were randomly assigned to the two treatment groups and the control group.

Respondents: Individuals or households, State, Local or Tribal Government.

Frequency of Submission: One time.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden:	10,277		1		1.35		13,933

Total Estimated Burden Hours: 13,933.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 6, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–22950 Filed 9–12–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permit for Marine Mammals

On May 22, 2001, a notice was published in the **Federal Register** (66 FR 28195), that an application had been filed with the Fish and Wildlife Service by Lee Anderson, Jr., for a permit (PRT–042060) to import one polar bear taken from the Lancaster Sound population, Canada, for personal use.

Notice is hereby given that on August 15, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 15, 2001, a notice was published in the **Federal Register** (66 FR 32635), that an application had been filed with the Fish and Wildlife Service by Alfred Cito for a permit (PRT–043609) to import one polar bear taken from the Northern Beaufort population, Canada, for personal use.

Notice is hereby given that on August 16, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 22, 2001, a notice was published in the **Federal Register** (66 FR 28195), that an application had been filed with the Fish and Wildlife Service by David Polke for a permit (PRT–042518) to import one polar bear taken from the Lancaster Sound population, Canada, for personal use.

Notice is hereby given that on August 16, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 7, 2001, a notice was published in the **Federal Register** (66 FR 23043), that an application had been filed with the Fish and Wildlife Service by Karl W. Minor for a permit (PRT–041679) to import one polar bear taken from the Lancaster Sound population, Canada, for personal use.

Notice is hereby given that on August 21, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 22, 2001, a notice was published in the **Federal Register** (66 FR 28195), that an application had been filed with the Fish and Wildlife Service by Robert V. Polito for a permit (PRT–041826) to import one polar bear taken from the Northern Beaufort population, Canada, for personal use.

Notice is hereby given that on August 15, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

Dated: August 31, 2001.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–22989 Filed 9–12–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–1610–DP; GP–01–0272]

Availability for the Draft Lakeview Resource Management Plan (RMP) and Environmental Impact Statement (EIS)

AGENCY: Lakeview District (Oregon), Bureau of Land Management: (OR–015–1610–DP; GP–01–0272, DOI.

ACTION: Notice of availability for the Draft Lakeview Resource Management Plan (RMP) and Environmental Impact Statement (EIS).

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA), this document provides notice that the Bureau of Land Management (BLM) intends to make the draft RMP/EIS available for public review and comment. This planning activity encompasses approximately 3.2 million acres of public land managed by the Lakeview Resource Area, Lakeview District and located in Lake and Harney Counties in southeastern Oregon. In addition, a small, contiguous portion of Modoc and Washoe Counties located in northeastern California and northwestern Nevada falling within the administrative boundary of the Surprise Field Office in Cedarville, California, but managed by the Lakeview Resource Area is also included for analysis purposes. The BLM has and will continue to work closely with all interested parties to identify the management decisions that are best suited to the needs of the public. This collaborative process will take into account local, regional, and national needs and concerns. This notice initiates the public review process on the draft RMP/EIS. The public is invited to review and comment on the range and adequacy of the draft alternatives and associated environmental effects.

DATES: The comment period will end 90 days after publication of the Environmental Protection Agency's Notice of Availability of this draft plan and environmental impact statement in the **Federal Register**. Comments on the draft RMP/EIS should be received on or before the end of the comment period at the address listed below.

Public Participation: Public meetings will be held during the comment period. In order to ensure local community participation and input, public meetings will be held in Lakeview, North Lake County, and Bend, Oregon. Early participation by all those interested is encouraged and will help determine the future management of public lands in the Lakeview Resource Area. At least 15 days public notice will be given for activities where the public is invited to attend. All individuals, organizations, agencies, and tribes with a known interest in this planning effort have been sent a copy of the document for review. Written comments will be accepted throughout the planning process at the address shown below. For comments to be most helpful, they should relate to specific concerns or conflicts that are within the legal responsibilities of the BLM and they must be able to be resolved in this planning process. Specific dates and locations of meetings and comment deadlines will be announced through the local news media, newsletters and the BLM Web site (*www.or.blm.gov/Lakeview*).

ADDRESSES: Written comments should be sent to Dwayne Sykes, RMP Team Leader, Bureau of Land Management, HC 10 Box 337, Lakeview, Oregon 97630. Documents pertinent to this proposal may be examined at the Lakeview Resource Area office in Lakeview, Oregon and local libraries. Comments, including names and street addresses of respondents, will be available for public review at the Lakeview Resource Area office during regular business hours 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the Final EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION: For further information and/or to have your name added to our mailing list, contact Dwayne Sykes at (541) 947–2177 (Phone), (541) 947–6399 (Fax), or e-mail at *d1sykes@or.blm.gov*.

SUPPLEMENTARY INFORMATION: This land use plan focuses on the principles of multiple use management and sustained yield as prescribed by Section 202 of the FLPMA. This plan will provide direction for management of the public lands within the Lakeview Resource Area for 15–20 years after the plan is completed. It will replace all or portions of three nearly 20 year old existing land use plans covering the Lakeview

Resource Area. The draft RMP/EIS considers and analyzes five (5) alternatives (A–E), including the No Action or Present Management alternative, with Alternative D identified as the agency's Preferred Alternative. These alternatives have been developed based on extensive public input following scoping (July 1999), review of the summary of the Analysis of the Management Situation (July 2000) and numerous meetings with local governments, tribes and the Southeast Oregon Resource Advisory Council (RAC). The alternatives provide for a wide array of alternative land use allocations and management direction. The alternatives provide for variable levels of commodity production, resource protection, and authorized land and resource uses, including utility corridors, energy and non-energy mineral leasing, livestock grazing and various forms of recreation. A final environmental impact statement and proposed Lakeview Resource Management Plan is expected to be available for public review in early 2002.

Dated: August 23, 2001.

Scott R. Florence,

Field Manager, Lakeview Resource Area.

[FR Doc. 01–22943 Filed 9–12–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–920–01–1310–FI–P; (MTM 82821, MTM 84944, NDM 86224]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases MTM 82821, MTM 84944, NDM 86224

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per Public Law 97–451, the lessee timely filed a petition for reinstatement of oil and gas leases MTM 82821 and MTM 84944, Sheridan County, Montana, and NDM 86224, Billings County, North Dakota. The lessee paid the required rentals accruing from the date of termination.

We haven't issued any leases affecting the lands. The lessee agrees to new lease terms for rentals and royalties of $5 per acre and 16⅔ percent or 4 percentages above the existing competitive royalty rate on lease MTM 82821 and $10 per acre and 16⅔ percent or 4 percentages above the existing competitive royalty rate on leases MTM 84944 and NDM 86224. The lessee paid the $500 administration fee for the reinstatement of each lease and $148 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the leases per section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the leases, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $5 per acre for lease MTM 82821;
- The increased rental of $10 per acre for leases MTM 84944 and NDM 86224;
- The increased royalty of 16⅔ percent or 4 percentages above the existing competitive royalty rate; and
- The $148 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Karen L. Johnson, Chief, Fluids Adjudication Section, BLM Montana State Office, PO Box 36800, Billings, Montana 59107, 406–896–5098.

Dated: August 16, 2001.

Karen L. Johnson,

Chief, Fluids Adjudication Section.

[FR Doc. 01–22945 Filed 9–12–01; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–28260]

Public Land Order No. 7499; Revocation of Secretarial Order dated April 10, 1935; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial Order in its entirety as it affects the remaining 80.57 acres of public land withdrawn for the San Luis Drainage Reclamation Project. The land is no longer needed for reclamation purposes. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: October 15, 2001.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated April 10, 1935, which withdrew public land for the Bureau of Reclamation San Luis Drainage Project, is hereby revoked in its entirety:

New Mexico Principal Meridian

T. 42 N., R. 10 E.,
Sec. 18, lot 1 and SE¼NW¼.

The area described contains 80.57 acres in Saguache County.

2. At 9 a.m. on October 15, 2001, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on October 15, 2001, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a. m. on October 15, 2001, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 21, 2001.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 01–22942 Filed 9–12–01; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–28263]

Public Land Order No. 7496; Revocation of Three Secretarial Orders; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes three Secretarial Orders which withdrew National Forest System lands for the Bureau of Reclamation South Platte

Reclamation Project. The lands are no longer needed for reclamation purposes and this order will open 9,943 acres to Forest Service management and to mining. All of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: October 15, 2001.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. (1994), it is ordered as follows:

1. The three Secretarial Orders dated May 13, 1943, which withdrew National Forest System lands for the Bureau of Reclamation South Platte Reclamation Project, are hereby revoked in their entireties as to certain lands in the following Townships:

Sixth Principal Meridian

Pike National Forest

Tps. 7 and 8 S., R. 69 W., Tps. 7, 8, and 9 S., R. 70 W., and T. 6 S., R. 77 W.

The areas identified aggregate approximately 9,943 acres of National Forest System lands in Douglas, Jefferson, and Summit Counties. More specific legal descriptions showing sections and subdivisions may be obtained by contacting Doris Chelius at the address or phone number listed above. The documents may also be examined by the public during regular working hours at the Bureau of Land Management Colorado State Office.

2. At 9 a.m. on October 15, 2001, these lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994) shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: August 15, 2001.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 01–22944 Filed 9–12–01; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

American River Pump Station Project, Placer County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Draft Environmental Impact, DES 01–26 Statement/Environmental Impact Report (Draft EIS/EIR) and notice of public hearing.

SUMMARY: The U.S. Bureau of Reclamation (Reclamation) and the Placer County Water Agency (PCWA) have made available for public review and comment the Draft EIS/EIR for the American River Pump Station Project.

The proposed project would develop a pump station and related facilities on the North Fork American River near Auburn, California. The project would allow PCWA to convey its Middle Fork Project (MFP) water entitlement to the Auburn Ravine tunnel to meet demands within its service area; eliminate safety concerns associated with the Auburn Dam bypass tunnel; restore the dewatered portion of the North Fork American River at the Auburn Dam construction site; and provide river access sites in the project area. Both facilities- and diversion-related impacts are addressed in the Draft EIS/EIR.

DATES: Submit written comments on the Draft EIS/EIR on or before November 13, 2001 at the address provided below. A public hearing will be held from 7 p.m. to 9 p.m. on October 11, 2001. Oral or written comments will be received regarding the project's environmental effects.

ADDRESSES: The public hearing will be held at the Placer County Water Agency, 144 Ferguson Road, Auburn, CA 95604.

Written comments on the Draft EIS/EIR should be addressed to Ms. Carol Brown, Surface Water Resources, Inc., 2031 Howe Avenue, Suite 110, Sacramento, California 95825.

Copies of the Draft EIS/EIR may be requested from Ms. Brown at the above address or by calling (916) 563–6360. See **SUPPLEMENTARY INFORMATION** section for locations where copies of the Draft EIS/EIR are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Roderick Hall, Reclamation, at (916) 989–7279, TDD (916) 989–7285, or e-mail: *rhall@mp.usbr.gov;* or Mr. Brent Smith, PCWA, at (530) 823–4889, or e-mail at *Bsmith@pcwa.net.*

SUPPLEMENTARY INFORMATION: The Draft EIS/EIR will address facilities-related impacts including the effects of project construction and operation on fish resources, vegetation and wildlife, water quality, recreation, visual and cultural resources, land use, geology and soils, traffic and circulation, air quality, noise, and public health and worker safety. Diversion-related impacts include the effects of increased diversions from the American River and associated changes in Reclamation's operation of Central Valley Project (CVP) facilities. Project diversions therefore may directly or indirectly affect the American and Sacramento River (including the Delta) resources including water supply, fish and aquatic habitat, riparian vegetation and habitat, water quality, recreation, visual and cultural resources, and power supply. The Draft EIS/EIR also evaluates potential urban development impacts for the PCWA water service area. An evaluation of cumulative hydrologic and water service area impacts associated with reasonably foreseeable American River actions is also included.

Copies of the Draft EIS/EIR are available for public inspection and review at the following locations:

- Auburn-Placer County Library, 350 Nevada Street, Auburn, CA 95603.
- El Dorado County Main Library, 345 Fair Lane, Placerville, CA 95667.
- Georgetown Divide Public Utility District, 6425 Main Street, Georgetown, CA 95634.
- Lincoln Library, 590 5th Street, Lincoln, CA 95648.
- Loomis Branch Library, 6050 Library Drive, Loomis, CA 95650.
- Penryn Library, 2215 Rippey Road, Penryn, CA 95663.
- Placer County Water Agency, 144 Ferguson Road, Auburn, CA 95604.
- Rocklin Library, 5460 5th Street, Rocklin, CA 95677.
- Sacramento Public Library, 828 I Street, Sacramento, CA 95814.
- U.S. Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630.
- U.S. Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225; telephone: (303) 445–2072.
- U.S. Bureau of Reclamation, Office of Public Affairs, 2800 Cottage Way, Sacramento, CA 95825–1898; telephone: (916) 978–5100.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street

NW, Main Interior Building, Washington, DC 20240–0001.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Hearing Process Information

The purpose of the public hearing is to provide the public with an opportunity to comment on environmental issues addressed in the Draft EIS/EIR. Written comments will also be accepted.

Dated: August 21, 2001.

Kirk C. Rodgers,

Acting Regional Director.

[FR Doc. 01–22977 Filed 9–12–01; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–454]

In the Matter of Certain Set-Top Boxes and Components Thereof; Notice of a Commission Determination not to Review an Initial Determination Allowing an Amendment to the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting a motion to amend the complaint in the above-captioned investigation to add license agreements and licensees.

FOR FURTHER INFORMATION CONTACT: Mary Elizabeth Jones, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3106. Copies of the subject ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TTD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 16, 2001, based on a complaint by Gemstar-TV Guide International, Inc. of Pasadena, California, and StarSight Telecast, Inc. of Fremont, California, alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain set-top boxes and components thereof by reason of infringement of claims 18–24, 26–28, 31–33, 36, 42–43, 48–51, 54, 57–61, and 66 of U.S. Letters Patent 5,253,066; claims 1, 3, 8, and 10 of U.S. Letters Patent 5,479,268; and claims 14–17, 19, and 31–35 of U.S. Letters Patent 5,809,204.

On August 7, 2001, complainants Gemstar-TV Guide International, Inc. and StarSight Telecast, Inc. moved to amend the complaint to add license agreements and licensees. No party opposed the motion to amend.

On August 23, 2001, the presiding ALJ issued an ID (Order No. 24) granting the motion. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Issued: September 7, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–22962 Filed 9–12–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–73]

Steel

AGENCY: United States International Trade Commission.

ACTION: Change in scheduled date for posthearing briefs on injury.

SUMMARY: On September 5, 2001, the Commission published notice of the schedule for the public hearings to be conducted during the injury phase of investigation No. TA–201–73, Steel (66 FR 46469, September 5, 2001). That notice set September 27, 2001 as the deadline for posthearing briefs on injury regarding carbon and alloy flat products. The Commission has changed that deadline to 2 p.m. on September 28, 2001.

EFFECTIVE DATE: September 7, 2001.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Media should contact Peg O'Laughlin (202–205–1819), Office of External Relations. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

Authority: This investigation is being conducted under the authority of section 202 of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

Issued: September 7, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–22963 Filed 9–12–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0075(2001)]

Standard on Fire Brigades; Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits public comment concerning the proposed extension of the information-collection requirements contained in the Standard on Fire Brigades (29 CFR 1910.156).

DATES: Submit written comments on or before November 13, 2001.

ADDRESSES: Submit written comments to the Docket No. ICR–1218–0075(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to: (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified in the Standard on Fire Brigades is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222 or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www.osha.gov and select ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct. The Standard imposes the following paperwork requirements on each employer who establishes a fire brigade: Write an organizational statement; ascertain the fitness of employees with specific medical conditions to participate in fire-related operations; and provide appropriate training and information to fire-brigade members.

Although OSHA does not mandate that employers establish fire brigades, if they do so, they must comply with the provisions of the Standard. The provisions of the Standard, including the paperwork requirements, apply to fire brigades, industrial fire departments, and private or contract fire departments, but not to airport crash-rescue units or forest fire-fighting operations. Paragraphs (b)(1), (b)(2), (c)(1), (c)(2), and (c)(4) contain the paperwork requirements of the Standard.

Under paragraph (b)(1) of the Standard, employers must develop and maintain an organizational statement that establishes the: Existence of a fire brigade; the basic organizational structure of the brigade; type, amount, and frequency of training provided to brigade members; expected number of members in the brigade; and functions that the brigade is to perform. This paragraph also specifies that the organizational statement must be available for review by employees, their designated representatives, and OSHA compliance officers. The organizational statement delineates the functions performed by the brigade members and, therefore, determines the level of training and type of personal protective equipment (PPE) necessary for these members to perform their assigned functions safely. Making the statement available to employees, their designated representatives, and OSHA compliance officers ensures that the elements of the statement are consistent with the functions performed by the brigade members and the occupational hazards they experience, and that employers are providing training and PPE appropriate to these functions are hazards.

To permit an employee with known heart disease, epilepsy, or emphysema to participate in fire-brigade emergency activities, paragraph (b)(2) of the Standard requires employers to obtain a physician's certificate of the employee's fitness to do so. This provision provides employers with a direct and efficient means of ascertaining whether or not they can safely expose employees with these medical conditions to the hazards of fire-related operations.

Paragraph (c)(1) of the Standard requires employers to provide training and education for fire-brigade members commensurate with the duties and functions they perform, with brigade leaders and training instructors receiving more comprehensive training and education than employers provide to the general membership. Under paragraph (c)(2) of the Standard, employers must conduct training and education frequently enough, but at least annually, to assure that brigade members are able to perform their assigned duties and functions satisfactorily and safely; employers must provide brigade members who perform interior structural fire fighting with educational and training sessions at least quarterly. In addition, paragraph (c)(4) specifies that employers must: Inform brigade members about special hazards such as storage and use of flammable liquids and gases, toxic chemicals, radioactive sources, and water-reactive substances that may be present during fires and other emergencies; advise brigade members of changes in the special hazards; and develop written procedures that describe the actions brigade members must take when special hazards are present, and make these procedures available in the education and training program and for review by the brigade members.

Providing appropriate training to brigade members at the specified frequencies, informing them about special hazards, developing written procedures on how to respond to special hazards, and making these procedures available for training purposes and review by the members enables them to use operational procedures and equipment in a safe manner to avoid or control dangerous exposures to fire-related hazards. Therefore, the training and information requirements specified by paragraphs (c)(1), (c)(2), and (c)(4) of the Standard prevent serious injuries and death among members of fire brigades.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other

technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to increase the existing burden-hour estimate, and to extend the Office of Management and Budget's (OMB) approval, of the collection-of-information requirements specified in the Standard on Fire Brigades (29 CFR 1910.156). OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Fire Brigades (29 CFR 1910.156).

OMB Number: 1218–0075.

Affected Public: Business or other for-profit; not-for-profit institution; Federal government; State, local or tribal governments.

Number of Respondents: 55,939.

Frequency: On occasion.

Average Time per Response: Varies from 5 minutes (.08 hour) to 2 hours.

Estimated Total Burden Hours: 6.042.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on September 7, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 01–23020 Filed 9–11–01; 8:45 am]

BILLING CODE 4510–26–M

LEGAL SERVICES CORPORATION

Property Acquisition and Management Manual

AGENCY: Legal Services Corporation.

ACTION: Issuance of Property Acquisition and Management Manual.

SUMMARY: This Notice sets forth the text of a Property Acquisition and Management Manual that governs the use by recipients of LSC funds to acquire, use and dispose of real and nonexpendable personal property. The Property Acquisition and Management Manual is intended to provide recipients with a single complete and consolidated set of policies and procedures related to property acquisition, use and disposal and supercedes guidance currently contained in several LSC documents.

EFFECTIVE DATE: This Property Acquisition and Management Manual is effective on October 15, 2001.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002–4250; 202/336–8817 (phone); 202/336–8952 (fax); mcondray@lsc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Legal Services Corporation's ("LSC") policies and procedures regarding LSC-funded recipients' property acquisition, use and disposal are incomplete, outdated and disbursed among several different LSC documents. In 1975 and again in 1979, LSC published Instructions in the **Federal Register** setting out procedures for the procurement, inventory control and disposal of nonexpendable personal property by LSC recipients. See 44 FR 22525, April 16, 1979. In 1981, the 1979 Instruction was superseded by the Property Management Manual for LSC Programs ("1981 Property Manual").[1]

LSC also addressed property acquisition and management issues in the 1981 version of the Audit and Accounting Guide for Recipients and Auditors ("1981 Audit Guide"). The 1981 Audit Guide included provisions requiring LSC's prior approval of certain purchases and leases of property (real and personal). These provisions were superseded by the LSC rule on cost standards and procedures, 45 CFR part 1630, which was adopted in 1986. See 51 FR 29082, August 13, 1986. Under the current part 1630 rule, adopted in 1997, LSC must approve in advance all purchases of real property, purchases or leases of personal property with a value of over $10,000 and capital expenditures of more than $10,000 to improve real property. 45 CFR 1630.5(b).

Notwithstanding the 1981 Audit Guide (or the current part 1630 requirements), the 1981 Property Manual, like its predecessor Instructions, does not address the acquisition, use or disposal of real property.[2] LSC has instead established its policies relating to real property in a variety of internal memoranda, Program Letters, regulations, grant assurances and individual agreements with recipients purchasing real property which have either restricted the use or regulated the disposal of the property in the event of cessation of LSC funding. Having policies related to real property in such unconnected and disparate sources has become untenable. For example, grant assurances on property have not been consistent over time and have on occasion been challenged as lacking legal authority.

Accordingly, LSC has decided that all of the relevant policies and requirements related to the acquisition, use and disposal of real and personal property should be consolidated and issued in one document. LSC published a proposed Property Acquisition and Management Manual (PAMM) for comment on September 28, 2000 (65 FR 58288). The comments received and the final version of the PAMM are discussed below.

Proposed Property Acquisition and Management Manual

Generally

The PAMM contains both existing and new or revised standards and procedures. In developing the new or revised standards and procedures, LSC looked to three existing Federal sources of property acquisition and management policy: the Federal Acquisition Regulations (FAR); the Federal Property Management Regulations; and Office of Management and Budget (OMB) Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" which contains standards governing the use and disposition of personal and real property by non-profit recipients of Federal funding. While many provisions of the PAMM are based on equivalent sections on these sources, LSC has revised these provisions as necessary to be consistent with LSC law and practice. In addition, this final version of the PAMM reflects some additional changes suggested by the comments LSC

[1] The Introduction to the 1981 Property Manual states that it was intended to supersede the 1975 Instruction. No mention is made of the 1979 Instruction. However, because the Manual was finalized as a slightly revised version of the 1979 Instruction, longstanding LSC policy has been that the 1981 Property Manual superseded the 1979 Instruction as well. Current LSC grant assurances and the current Accounting Guide for LSC Recipients reference the Property Manual "or its duly adopted successor."

[2] There have been suggestions to LSC that the 1981 Property Manual was originally intended to apply to real property and was so applied at sometime in the past. LSC's reading of the terms of the Manual, however, and LSC's practice over the last several years applying the requirements of the 1981 Property Manual only to personal property, indicate that it does not, in fact, apply to real property.

received on the proposed PAMM, as discussed below.

The personal property use standards are intended to give recipients flexibility in using such property acquired with LSC funds, provided that the primary use of the property is for the delivery of legal services to eligible clients in accordance with the requirements of the LSC Act and regulations. The standards governing the disposal of personal property revise existing policy to reflect the heightened need, in this era of reduced funding and competition for grants, for LSC to receive reimbursement to ensure that the scare funds available are serving their original intended purpose to the maximum extent possible. Accordingly, in the event that a recipient owning personal property purchased with LSC funds ceases to receive LSC funding, these standards require LSC approval prior to dispose of the property. The PAMM also provides for transfer of personal property in the case of a merger with or the succession of another recipient.

The PAMM retains LSC's longstanding policy to permit recipients, with LSC's approval, to use LSC funds to purchase real property for the primary purpose of delivery of legal services to eligible clients. The procedures, which incorporate provisions from Program Letter 98–4, require recipients to demonstrate that purchasing is more economical than leasing. Recipients are also required to agree to reimburse LSC in the event of a discontinuation of funding, unless a transfer of the property is made to a merged or successor entity in the case of a merger with or the succession of another recipient.

Most of the comments LSC received addressed specific sections of the proposed PAMM. These comments are addressed in the section-by-section analysis portions of this notice. There was one suggestion, however, which affects most of the sections of the PAMM, and which, therefore, LSC wishes to address at the outset. Many commenters objected to application of the PAMM to leases of personal property. Among the reasons given for this objection were: (1) Leases and leased property is generally not considered ''assets'' and, as such, should not be subject to the PAMM; (2) the negotiation of leases may not be ''amenable'' to the competition requirements of the PAMM; (3) the recipient Board of Directors is already charged with the fiduciary duty to ensure that leases of personal property are appropriate; (4) leases of personal property are often for items which are shared operating expenses, allocated among the recipient's funding sources and it could become problematic to have differing procedural requirements relating to the same property; and (5) as monthly lease payments may be small, representing a small amount of LSC resources, and since Part 1630 already requires program resources to meet a reasonableness standard, there is no need to include them in the PAMM.

LSC proposed to include leases of personal property under the coverage of the PAMM because recipients are increasingly spending sizable sums of LSC funds on leases of personal property and LSC believes that some measure of accountability to LSC for such expenditures is appropriate. The fact that a leased item may not be considered an ''asset'' of the recipient for an accounting purpose is not germane; the requirements of the PAMM are not intended to track assets, but rather to ensure that LSC funds are being expended on property in an efficient manner to best meet the legal services needs served by the recipient. LSC disagrees that it not feasible, as a general matter, to seek competitive quotes on large scale leases of equipment and other nonexpendable personal property and none of the commenters provided any factual evidence to back up this claim. Moreover, if the seeking of competitive quotes is not feasible in a particular instance, the PAMM provides a safe harbor for recipients to engage in sole source acquisitions.

LSC appreciates that recipient Boards already exercise fiduciary responsibilities relating to expenditures of LSC funds and that LSC regulations at 45 CFR part 1630 require a rule of reason in relation to expenditures of funds. However, part 1630 applies to all costs and Boards exercise fiduciary responsibility related to all expenditures of funds. If these facts were sufficient to ameliorate the need to apply the PAMM to leases of personal property, they would suffice to ameliorate the need to have the PAMM at all. The commenters, however, do not appear to question the propriety of having acquisition, use and disposal standards for purchased property.

LSC also disagrees that the fact that a lease may be funded from other than just LSC funds is likely to cause practical problems. First, the competition (and for individual items, the prior approval) requirements only apply to leases in which more than $10,000 of LSC funds are used. It is unlikely that such a lease would be one in which LSC funds are the minority source of funds and that other, inconsistent, competition requirements would apply and no such examples were specifically identified in any of the comments received. Second, the use requirements are broad enough that it is hard to imagine a inconsistent requirement stemming from another funding source. Finally, the disposition requirements only note that leased property is to be disposed of in accordance with the terms of the lease. Again, none of the comments received provided specific instances in which these requirements would be burdensome or inconsistent in reference to other directives attached to use of other funds.

LSC also notes that in the extensive comment process leading to the development of the proposed PAMM, no objection was raised to including leased personal property under coverage of the PAMM.

Section-by-Section Analysis

Section 1—Purpose and Scope

The section contains a statement indicating that the purpose of this PAMM is to set forth standards governing the acquisition, retention, use and disposal of personal and real property acquired in whole or in part with LSC funds. The section also specifies that LSC intends the standards in this PAMM to apply to both real and nonexpendable personal property, but not to expendable personal property or services, except services for capital improvements which are subject to the requirements of section 4(f). LSC has not previously applied the 1981 Property Manual standards to supplies and LSC does not believe that it is necessary to enlarge the scope of its oversight in such a manner. Finally, this section makes clear that LSC will apply the requirements of the PAMM to acquisitions made on or after the PAMM's effective date as set forth in this notice. For acquisitions of real property prior to the PAMM's effective date, the written agreement between the program and LSC will control. For prior acquisitions of personal property, the 1981 Property Manual will control.

LSC received three comments specifically related to this section. One comment suggested that the parenthetical reference to ''equipment'' should either be removed or clarified since there is nonexpendable personal property other than what is generally thought of as equipment. LSC agrees. References to ''equipment'' and ''supplies'' have been removed from this section. The definitions of nonexpendable personal property and expendable personal property have been clarified. These issues are discussed further under Section 2—Definitions, below.

The second comment LSC received on this section suggested that the reference to services for capital improvements should specify ''contracted'' services. This was certainly LSC's intent and the section has been modified to make this clarification.

LSC also received a request with regard to acquisitions of real property prior to the PAMM's effective date. The comment requested that LSC clarify its intent with regard to property for which there is no written agreement. LSC is aware of instances in which recipients have acknowledged through documented evidence that LSC funds have been used towards the acquisition of real property, without, however, a real property interest agreement having been executed. In the event of cessation of funding in these instances, disposition of the property will be handled on a case-by-case basis.

Section 2—Definitions

This section sets forth definitions of key terms used throughout the PAMM.

Section (2)(a) defines acquisition as a purchase of real property or a purchase or lease of personal property. It can consist of a single item or it can consist of multiple items obtained simultaneously through a single contract. This definition of acquisition is adapted from the definition of acquisition appearing in the FAR. The FAR definition of acquisition includes leases of real property as well, but LSC has chosen to leave real property leases out of the definition of acquisition because LSC is excluding leases of real property from the coverage of the PAMM. The term ''acquisition'' is used throughout the PAMM, except in those instances in which it is necessary to differentiate between personal property which is leased and personal property which has been purchased. In those cases, the term ''lease'' or ''purchase'' is used, as appropriate.

LSC received one comment suggesting that the term ''single acquisition'' as it is used in the definition is confusing. The commenter suggests replacing it with the term ''individual item.'' LSC does not agree that this term is confusing. Further, substituting the term ''individual item'' for ''single acquisition'' would alter the meaning of the definition. As noted above, the term ''single acquisition'' includes transactions in which more than one item is procured in a single contract, while ''individual item'' does not. Since many acquisitions are for multiple items acquired under a single contract, excluding these acquisitions from the PAMM (which would be the result if LSC were to make the suggested change) would seriously undermine the object of the PAMM of ensuring accountability and the efficient use of LSC funds. Accordingly, the definition is being adopted as proposed.

In addition, as discussed above, several commenters suggested that the PAMM not apply to leases of personal property, and these commenters, accordingly, suggested amending this section. For the reasons discussed above, LSC is retaining the requirement that leases of personal property be subject to the PAMM. Therefore, references to leases in the definition in 2(a) are retained as proposed.

LSC received a comment suggesting the addition of a definition for ''acquisition costs for real property.'' The commenter stated that LSC currently has no such definition. LSC disagrees. The preamble to the current part 1630 final rule, 62 FR 68219, addresses this matter, stating that the acquisition costs associated with the purchase of real property include principal and interest payments and initial down payments. However, LSC agrees that including that definition in the PAMM would be useful in as much as the PAMM is intended to be a single source for information. Accordingly, a definition of ''acquisition costs for real property'' is added as section 2(b). This definition reproduces and explicitly references the definition found in the December 31, 1997 preamble to the part 1630 final rule.

Section 2(c), capital improvement, incorporates the $10,000 capitalization threshold of LSC's regulation governing cost standards and procedures, 45 CFR 1530.5(b)(2). One commenter suggested that this section be clarified to specify that it applies only to amounts of over $10,000 of LSC funds. This has been and continues to be LSC's policy and this clarifying change has been made.

Section 2(d) defines lease as a contract for the use of property during a specified period for a specified price. Under a lease, the lessee does not take ownership of or title to the property. As discussed above, several commenters suggested that the PAMM not apply to leases of personal property, and these commenters, accordingly, suggested deleting this section. For the reasons discussed above, LSC is retaining the requirement that leases of personal property be subject to the PAM. Therefore, the definition is retained as proposed, although to allow for the insertion of a new definition of ''acquisition costs for real property,'' as discussed above, the definition has been redesignated from 2(c) to 2(d) in this final PAMM.

Section 2(e) contains a definition for LSC property interest agreement, a term used in sections 4(e) and 8(d) of this PAMM. The definition is consistent with section 2–2.4 of the Accounting Guide for LSC Recipients, which sets forth the principle that LSC possesses a reversionary interest in real property purchased in whole or in part with LSC funds.

LSC received no comments on this section and the definition is adopted as proposed. LSC notes that it is not using the term ''reversionary interest'' in the PAMM because LSC believes that the use of ''reversionary interest'' might be confusing. Although LSC's recipients who have entered into agreements with LSC pursuant to the purchase of real property understand what reversionary interest means in the context of their agreements, the term is a widely used term of art in the property law context with a somewhat broader and different meaning. To avoid potential confusion, LSC will use the more accurate ''LSC property interest agreement.'' In addition, to allow for the insertion of a new definition of ''acquisition costs for real property,'' as discussed above, the definition has been redesignated from 2(d) to 2(e) in this final PAMM.

Section 2(f) contains a definition of personal property adapted from OMB Circular A–110. LSC is, however, omitting supplies, which are considered to be personal property in the OMB Circular, from the definition because LSC does not intend to apply its property acquisition and management standards to the purchase, retention or use of supplies. As noted above, LSC has clarified the definition to provide more detailed examples of the types of things which are considered nonexpendable personal property or expendable personal property. Thus, the definition now notes that nonexpendable personal property includes such things as furniture and books in addition to equipment and that supplies include items such as stationery, paper clips, and pens. The items do not represent an exhaustive list, but rather are intended to signify the most common examples of each type of property. In addition, to allow for the insertion of a new definition of ''acquisition costs for real property,'' as discussed above, the definition has been redesignated from 2(e) to 2(f) in this final PAMM.

Section 2(g) limits the definition of real or personal property to property with a market value of over $5000 and a useful life of more than one year. This definition is consistent with OMB

Circular A–110. With this definition, LSC intends that property acquisition and management standards not apply to property excluded from the definition.

LSC originally proposed a definition of property with a $1000 threshold. LSC received several comments opposing the capitalization threshold of $1,000. These commenters noted that other Federal grants they receive are subject to the $5,000 OMB definition and that raising the limit would provide a greater measure of consistency to them in meeting property acquisition standards across grants. These commenters also noted that the $1,000 threshold seems artificially low in the current economy and that a $5,000 threshold would more appropriately reflect the point at which additional program oversight is justified. Raising the threshold, it is argued, would increase recipient flexibility. To the extent that LSC desires to maintain consistency with the LSC Accounting Guide, these comments suggest raising the capitalization threshold in the Guide to $5,000 as well.

In light of the above, LSC is adopting a $5000 threshold for the definition of property. To allow for the insertion of a new definition of ‘‘acquisition costs for real property,’’ as discussed above, the definition has been redesignated from 2(f) to 2(g) in this final PAMM.

Section 2(h) contains a definition of purchase which uses the term purchase in reference to personal property of which the recipient obtains ownership, as distinguished from leasing. As discussed above, several commenters suggested that the PAMM not apply to leases of personal property, and these commenters, accordingly, suggested amending this section. For the reasons discussed above, LSC is retaining the requirement that leases of personal property be subject to the PAMM. Therefore, the definition is retained as proposed, although to allow for the insertion of a new definition of ‘‘acquisition costs for real property,’’ as discussed above, the definition has been redesignated from 2(g) to 2(h) in this final PAMM.

Section 2(I) sets forth a definition for quote which incorporates language from the definition of ‘‘offer’’ in the FAR. For the purposes of the PAMM, a quote is intended to be the basis for informal negotiation which results in an offer by the recipient, typically in the form of a purchase order, which a source may accept or reject.

In response to a suggestion that the word ‘‘bid’’ be substituted for ‘‘quote’’ in section 4(f), LSC has instead chosen to amend section 2(I) to explicitly include competition for capital improvement services contracts in the definition of ‘‘quote.’’ LSC agrees with the commenter that this clarification is appropriate, but LSC thinks it is better accomplished in the definitions section. In addition, to allow for the insertion of a new definition of ‘‘acquisition costs for real property,’’ as discussed above, the definition has been redesignated from 2(h) to 2(I) in this final PAMM.

Section 2(j) sets forth a definition of real property taken from the definition of the same term in OMB Circular A–110. LSC received no comments on this definition and it is adopted as proposed, although to allow for the insertion of a new definition of ‘‘acquisition costs for real property,’’ as discussed above, the definition has been redesignated from 2(I) to 2(j) in this final PAMM.

Section 2(k) contains a definition of source as a supplier, vendor or contractor who has agreed to provide property to a recipient through a purchase or lease agreement. LSC received no comments on this definition and it is adopted as proposed, although to allow for the insertion of a new definition of ‘‘acquisition costs for real property,’’ as discussed above, the definition has been redesignated from 2(j) to 2(k) in this final PAMM.

Section 3—Acquisition Procedures for Personal Property

This section sets forth the procedures governing the acquisition of personal property with LSC funds. The requirements herein are based on both the FAR and OMB Circular A–110. Through the use of these procedures, LSC intends to encourage recipients to conduct their property acquisitions in a manner that provides free and open competition to the maximum extent practical.

LSC received a number of comments on the various aspects of this section, several of which indicated a significant misunderstanding of the proposed requirements. Specifically, several commenters objected to what they took to be LSC's proposal to require prior approval of aggregate acquisitions of over $10,000. However, LSC did not propose to require prior approval of aggregate acquisitions of over $10,000, but rather, only to require certain minimum competition standards for such large acquisitions. Under both the proposed and this final PAMM, prior approval is required, as specified in 45 CFR part 1630, for individual item acquisitions of over $10,000, but not for aggregate acquisitions of over $10,000.

A variant of this objection was contained in one comment which suggested deleting Section 3(a)–(d) as redundant, given the need for prior approval of large acquisitions referenced in Section 3(e). However, since section 3(e) refers only to the showing a recipient must make to obtain prior approval and sections 3(a)–(d) apply to acquisitions not requiring prior approval, the competition requirements of 3(a)–(d) are not redundant. Further, to the extent that, for acquisitions requiring prior approval, 3(e) recapitulates the requirements of 3(a)–(d), it does not place any additional substantive burden on recipients.

One commenter suggested that the competition requirements not apply to aggregate acquisitions of over $10,000, but only to individual item acquisitions of over $10,000. Acquisitions using over $10,000 of LSC funds represent a significant investment of funds, whether for a single item or multiple items in a single acquisition. As noted elsewhere herein, one of LSC's responsibilities is to act as a steward, ensuring the public funds it is entrusted to distribute are used for the purpose and in the manner which Congress made them available. Thus, LSC has a responsibility to ensure that recipients are, to the extent possible, ‘‘getting a good deal’’ on large acquisitions. Limiting the competition requirement to individual item purchases does not meet this objective and would undermine LSC's ability to exercise effective oversight over the use of LSC funds.

As proposed, acquisitions of over $10,000 would have to have been accomplished by written competitive quote. This proposed requirement was based on the FAR and OMB Circular A–110, each of which require that requests for quotes clearly identify the salient characteristics of the property to be acquired, as well as the basis for evaluating quotes and selecting a source. LSC received comments suggesting that the requirement for three written quotes could be relaxed or otherwise redesigned to allow recipients greater flexibility in competing and completing procurements. In this area, a few commenters suggested the language of this section take into account the increasing use of catalogs and internet sites in procurement.

LSC agrees with these commenters that LSC could make changes to provide more options to recipients while still meeting LSC's objective that recipients seek to obtain competitive prices on the items they acquire. An as initial matter, LSC notes that, even as proposed, the use of electronic media would have been permissible to secure written quotes. However, LSC believes that this section was susceptible to improvement beyond simply making this point more explicit. Accordingly, section 3(a) has been significantly revised to require a recipient to consider competitive quotes from at least three potential sources for the property. Under the revised language, a recipient may make individual requests for quotes and/or may use quotes listed in suppliers' online or printed catalogs, posted on electronic websites or contained in other publicly available materials.

Individual item acquisitions of over $10,000 will have to be approved in advance by LSC. This includes acquisitions made to replace already-existing property, the original acquisition of which LSC may have approved at a prior point in time. Consistent with previous LSC guidance, requests for prior approvals will have to include a justification stating the need for the acquisition, a brief description of the property to be acquired and a description of the acquisition process used, including the quotes received by the recipient.

LSC has added language to this section to allow a recipient making a grant application to include a prior approval request in the grant application. The provision specifies that any such request must identify the particular item proposed to be acquired and include a justification which complies with the requirements of this section. In such a case, the grant approval will serve as the notice of the approval of the acquisition request. LSC believes that this will save time and effort for recipients, particularly (but not exclusively) those seeking funds under the Technology Grants program, who know that they intend to acquire a large individual item with the grant funds for which they are applying. Thus, by allowing a recipient to include the prior approval request in the grant application instead of having to make a separate request once the grant is awarded, LSC hopes to lessen the burdens on recipients, while still ensuring compliance with the requirements of Part 1630. Any prior approvals granted in this manner would, like all grants, be conditional upon the availability of the grant funds, and like app prior approvals, be subject to the duration requirements of 45 CFR 1630.5(c).

Other comments LSC received on this section noted concerns about situations in which exceptions to the basic policy would be necessary. LSC notes that the procedures permit sole source acquisitions if circumstances prevent requesting competitive quotes. In such cases, recipients would have to document the reason(s) for conducting the acquisition on a sole source basis. LSC believes that this language is sufficient to alleviate concerns in this area. This is particularly so in light of the fact that the language reflects current LSC policy, which has worked well up to this point.

In addition, as discussed above, several commenters suggested that the PAMM not apply to leases of personal property, and these commenters, accordingly, suggested amending this section. For the reasons discussed above, LSC is retaining the requirement that leases of personal property be subject to the PAMM. Therefore, references to leases in this section are retained as proposed.

Section 4—Acquisition Procedures for Real Property

Section 4 contains the procedures for the acquisition of real property. Under this section, prior to acquiring real property, a recipient is required to identify and evaluate at least three potential sites. This section draws upon a similar requirement in the FAR relating to the selection of sources for the leasing of real property. The types of costs to be considered in an analysis of an acquisition of real property would be those which LSC asks recipients to describe when seeking prior approval of an acquisition of real property pursuant to LSC Program Letter 98–4, dated July 1, 1998. Recipients are encouraged to negotiate with potential sources prior to entering a contract in order to obtain the most favorable contract terms possible.

LSC received a variety of comments on the proposed requirements in this section. One comment suggested that the competition requirements not be applied to purchases of real property, while others suggested that the competition factors be broadened to allow recipients to take into account certain non-monetary factors (i.e., accessibility of facility to public transportation), and that the required cost analysis include occupancy costs.

For many recipients, such a purchase may represent the single largest acquisition they ever make. Hence, LSC does not believe it is unreasonable to expect recipients to consider alternate properties and gain the benefits of competition in making real estate purchases. However, LSC does agree that many factors other than price alone are appropriately considered in making the choice of selecting one property over another. Indeed, past practice in reviewing and granting prior approvals demonstrates that recipients do consider factors other than price and LSC approves of such practices. Accordingly, LSC has revised section 4 to make explicit the ability of recipients to consider a range of qualitative factors when considering real property acquisition alternatives and that the required cost analysis includes occupancy costs.

One commenter requested that LSC clarify the time period over which the average annual cost analysis should be done. Section 4(c), as proposed, stated that the cost analysis should be for the life of the financing. LSC believes this is sufficiently clear and has made no changes to this language.

This section retains LSC's prior approval requirement for acquisitions of real property.[3] Sections 4(d)(1) through (7) reflect provisions from Program Letter 98–4 setting forth the types of information which LSC requires recipients to submit in support of a request for prior approval of an acquisition of real property. LSC received no comments on this section and LSC retains the language as proposed.

Section 4 also retains LSC's longstanding practice of requiring, as a condition of LSC's approval of the acquisition of real property, a formal agreement between LSC and the recipient setting forth the terms of LSC's approval. These agreements have included provisions governing the disposal of property purchased with LSC funds, both during the grant term and upon cessation of funding and requiring the recipient to record LSC's interest in the property. LSC received a few comments on this provision.

One commenter requested that LSC clarify 4(e)(1) relating to property agreements, on the basis that the reference to ''delivering legal services to eligible clients'' was somewhat confusing because it could be interpreted to require that real property could be used only for the delivery of legal services to eligible clients and not for any other purpose or for services to ineligible clients who are otherwise lawfully served by the recipient (with non-LSC funds). LSC agrees that such an interpretation would be overbroad and unnecessary. However, LSC does not believe that the section 4(e)(1), as proposed, lends itself to such an interpretation. Moreover, LSC notes that other sections of the property manual contemplate use of property for other purposes (see, e.g., section 5(f) on conditions under which property may be used by organizations engaging in LSC-restricted activities). Rather, the language was intended to convey the message that recipients are not to use LSC funds to purchase real estate simply for investment purposes, but that

[3] LSC's longstanding policy is that leases of real property do not require prior approval and LSC does ot propose any change to that policy.

rather, any real estate purchased is to be acquired primarily as office space for the recipient. Although LSC has not made any changes to the language in section 4(e), LSC has clarified the language elsewhere in the PAMM to make explicit that property acquired with LSC funds is to be acquired and used for the primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts and LSC regulations.

Another commenter suggested that the PAMM should more fully explicate LSC's interest in real property. Individual property agreements, which are expressly required by the PAMM, currently do and will continue to serve this functions. Accordingly, LSC has made no changes in section 4 in regard to this matter.

Finally, LSC restates in the PAMM LSC's requirement in 45 CFR 1630.5(b)(4) that recipients obtain prior approval of expenditures for capital improvements. This requirement applies to leasehold improvements as well as improvements to recipient-owned property. LSC retains the existing requirement from Program Letter 98–4 that recipients submit certain information in support of requests for prior approval of capital improvements. LSC did receive one comment on this section, requesting that LSC allow for emergency approval of acquisitions related to capital expenditures. LSC has traditionally permitted recipients to make such arrangements as are necessary in emergency situations, such as in response to natural disasters or other such occurrences which require emergency repairs and there was no intention to change this policy in the proposed PAMM. Accordingly, section 4(f) has been revised to permit a recipient to seek emergency approval of expenditures for capital improvements prior to providing the full written justification. In such cases, recipients will have to provide the required information to LSC in a timely manner.

Another commenter suggested substituting the word ''bid'' for ''quote'' in section 4(f). As noted above, while a clarification is appropriate, LSC thinks the clarification is better accomplished in the definitions section. Accordingly section 2(I) is amended to explicitly include competition for capital improvement services contracts.

Section 5—Retention and Use of Property Acquired With LSC Funds

Section 5 sets forth the standards for the management of real and personal property acquired with LSC funds. These standards build upon the principle contained in OMB Circular A–110, that grant recipients should possess full ownership of personal and real property purchased in whole or in part with grant funds. With regard to leased personal property, the PAMM reflects current LSC policy that leased property may be used according to the lease terms during the term of an LSC grant or contract, and must be disposed of according to the lease terms in the event that there is a cessation of LSC funding.

Under the provisions of this section, recipients are permitted to retain property as long as they continue to receive LSC funding. This represents a change from the prior policy which permitted recipients to retain property as long as it was needed for civil legal assistance. This change reflects the heightened need, in the competitive grant environment, for LSC to ensure that its funds are available to the maximum extent possible for LSC recipients and programs.

Notwithstanding the above, under the PAMM a recipient may use property acquired with LSC funds for permissible non-LSC activities, such as the representation of income-ineligible clients, provided that such other use does not interfere with the performance of the recipient's duties under its LSC grant. This flexibility parallels similar provisions in OMB Circular A–110. Further, a recipient is permitted to lease space to others or otherwise allow the use of its property for restricted activities, provided that the recipient charges a fair market price for such lease or property use. Any such use will also have to be consistent with the program integrity requirements of 45 CFR Part 1610.

LSC received one comment specifically addressing this particular provision. The commenter suggested that LSC replace the phrase ''shall not be less than'' with ''shall be reasonable and comparable to'' in 5(e) and (f). The phrase ''shall not be less than'' was derived from OMB Circular A–110 and chosen to ensure that the provisions would be consistent with IRS rules. As such, LSC does not believe that changing this language is desirable or advisable. Accordingly, the language has not been changed.

Section 5(f) addresses the use of a particular subset of personal property—copyrights. Incorporating language from OMB Circular A–110, this paragraph provides that recipients be permitted to own copyrights to publications, software, and other copyrightable works created in whole or part with LSC funds. However, in conformance with longstanding LSC policy, recipients creating or otherwise obtaining copyrightable materials with LSC funds will have to provide LSC free access to and use of such materials, including the right to make such materials available to other LSC recipients.

Other than the comments relating to paragraphs (e) and (f) discussed above, the only other comments LSC received on section 5 suggested amendments to this section reflecting the suggestion that the PAMM not apply to leases of personal property. For the reasons discussed above, LSC is retaining the requirement that leases of personal property be subject to the PAMM. Therefore, references to leases in this section are retained as proposed. All other provisions are also retained as proposed.

Section 6—Disposal of Personal Property Acquired With LSC Funds

This section establishes requirements governing the disposal of personal property. Generally, recipients have considerable discretion in selecting methods of disposing of personal property purchased with LSC funds, except at the point which a recipient ceases to receive LSC funds. At the cessation of LSC funding, recipients have an obligation to LSC with respect to items of personal property.

LSC received a comment asking LSC to clarify section 6 with regard to the proper standards for disposing of property having a value of less than the definitional threshold standard in Section 2(g). Property is defined in the PAMM as having a threshold value of $5,000. Thus, property with a current market value at the time of disposition of less than $5,000 is not, by its own terms, subject to the PAMM. Recipients are, accordingly, free to dispose of property having a value of less than $5,000 in any manner in which the recipient sees fit. LSC reminds recipients that the relevant dollar value is the current market value. Thus, property with a current market value of less than $5,000 at the time of disposal is not subject to the PAMM, regardless of the value of the property at the time of acquisition.

In the notice setting forth the proposed PAMM, LSC requested comment on the proposal to prohibit the sale of excess property to recipient Board members or employees. None of the commenters affirmatively supported this proposal, while one commenter stated that it did ''not disagree'' with the proposal and several commenters stated that they disagreed with the proposal. It was not altogether clear, however, whether those commenters opposing the proposal were considering that the prohibition, as proposed, would only apply to property with a value of over $1,000. Given the definition of property in the PAMM, property with a current market value of less than $5,000 would, as noted above, be subject to disposal by the recipient without restriction, including by sale to Board members or employees. In light of the above, LSC believes that the proposed restriction should be adopted. As written, the prohibition will only apply items of significant value. LSC believes this is appropriate, yet still allows recipients flexibility in disposing of items of lesser value.

The PAMM, as noted above, permits recipients considerable latitude in disposing of personal property purchased with LSC funds during the term of an LSC grant. Specifically, under this section, recipients may: (1) Trade property to suppliers or vendors in return for reductions in the acquisition price of new or replacement property; (2) sell the property, by the solicitation of formal quotes for property with a value of over $15,000, or by negotiation where the property has a value $15,000 or less or where advertising for bids has not resulted in reasonable bid prices;[4] (3) transfer the property to third parties which are eligible under statute to receive support from LSC; (4) transfer the property to non-LSC programs, subject to LSC approval; or (5) transfer the property to other nonprofit programs serving the poor in the same community. These options are consistent with current Federal practice as reflected in OMB Circular A–110, the Federal Property Management Regulations (41 CFR Chapter 101) and the 1981 Property Manual.

Another comment addressing the disposal procedures suggested that the requirements should apply only in situations in which the recipient had to get prior approval of the acquisition and in which the property had a current market value (at the time of disposition) of greater than $10,000 and that LSC should limit its interest in such property to a period of one year. If LSC were to adopt this suggestion, almost all personal property dispositions would no longer be subject to any standards. Under such circumstances, LSC would lose its ability to exercise effective oversight over the use of LSC funds. As noted above, one of LSC's responsibilities is to act as a steward, ensuring the public funds it is entrusted to distribute are used for the purpose and in the manner which Congress made them available and the lack of accountability over most funds cannot be justified.

The PAMM provides for different options for the disposal of personal property at the point that a recipient ceases to receive LSC funding. Recipients are permitted to transfer or retain personal property purchased with LSC funds, provided that LSC would be compensated in an amount equal to the percentage of the property's acquisition cost funded with LSC monies. These provisions are based on disposal options set forth in OMB Circular A–110. It is anticipated that LSC and recipients will identify, on a case by case basis at the time of cessation of funding, the best method for disposing of personal property purchased with LSC funds.

One commenter also suggested that LSC should delete references to LSC being entitled to compensation in the case of disposal of property by sale by the recipient. This commenter suggested that such an action would make it appear that LSC was interested in profit-making. As LSC noted in the notice of the proposed PAMM, funding is limited and available only on a competitive basis. Thus, rather that seeking some undue ''windfall'' from the disposition of property acquired with LSC funds, LSC is seeking to recoup funds in order to redistribute them to ensure that the scarce funds available are serving their original purpose to the maximum extent possible. If LSC were to permit recipients to retain all the proceeds from a disposition of property once they ceased being funded by LSC, it could be argued that the recipient would be reaping an undue windfall. At the least, the benefits of those dollars would no longer be assured of serving the original intended purpose. Accordingly, these provisions have not been changed. A provision has been, however, to reflect the current LSC policy that reimbursed funds are to be used to make additional grants to the field and that grants will generally be to recipients in the same service area which the funds originally supported.

With respect to leased personal property, the PAMM provides that during the term of an LSC grant or contract, recipients be permitted to dispose of such leased with LSC funds in accordance with the terms of the lease. When a recipient ceases to receive LSC funding, the recipient would be required to dispose of items of personal property leased with LSC funds in accordance with the terms of the lease.

LSC was asked provide additional clarification regarding it what it intended by requiring disposal of leased property in conformance with the terms of the lease. The other disposal-related requirements all apply to property purchased and owned by recipients. Leased property is, by definition, not owned by the recipient and the recipient is not at liberty to dispose of the property by giving it away or selling it. However, since LSC anticipates that there will occasionally be a need for recipients to divest themselves of leased property, it was appropriate that this circumstance be included in the PAMM. Since, the use and disposal of leased property is generally governed by the terms of the lease itself, LSC thought it was sufficient to note that any such property should be disposed of as required by the terms of the lease under which the property was obtained. This provision is retained as proposed.

A number of commenters noted that the requirements related to disposal in the case where a recipient ceases to receive funding are unclear if the recipient is undergoing a merger or takeover. In such a case, while the recipient may itself become a different (or non-existent) legal entity, the successor organization will be a funded recipient.

LSC agrees that this is a special circumstance which merits specific treatment in the PAMM. Accordingly, LSC has added a new provision to Section 6 to provide that when a recipient ceases to receive LSC funding because the recipient has merged with or is succeeded by another recipient, the recipient may transfer the property to the merged or successor recipient, provided that the recipient and the merged or successor recipient execute a successor in interest agreement, approved by LSC, which requires the merged or successor recipient to use the property for the primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts, and LSC regulations.

Section 7—Disposal of Real Property Acquired With LSC Funds

Section 7 sets forth the proposed standards for the disposal of real property purchased with LSC funds. As with the personal property disposal standards in Section 6, LSC proposes to provide different options for disposals occurring during the grant term and at the cessation of LSC funding.

[4] By reference to 45 CFR 1630.12, section 6(c) would clarify that income from the state of property purchased with LSC funds is LSC derivative income subject to the requirements of the LSC Act, regulations, and other applicable law. As such, LSC derivative income becomes part of the LSC fund balance which may need to be returned to LSC if the fund balance amount exceeds limits established by 45 CFR part 1628.

For recipients seeking to dispose of real property during the grant term, LSC retains the longstanding LSC policy whereby recipients are permitted to sell real property acquired with LSC funds.[5] Recipients are also permitted to transfer real property to other LSC recipients. This is consistent with most LSC property interest agreements between LSC and recipients using LSC funds to purchase real property.

LSC also received a couple of comments suggesting limiting section 7 to ''acquisition costs.'' The PAMM, as proposed, reflected current policy related to disposition of property and is what LSC is currently requiring in property agreements. LSC sees no reason to change the policy at this time.

At the point of cessation of LSC funding, the PAMM permits recipients to sell, transfer or retain real property acquired with LSC funds, provided that LSC is compensated in an amount equal to the percentage of the property's acquisition cost funded by LSC monies. LSC will have to approve any such disposition in advance.

One commenter suggested that LSC should delete references to LSC being entitled to compensation in the case of disposal of property by sale by the recipient. This commenter suggested that such an action would make it appear that LSC was interested in profit-making. As LSC noted in the notice of the proposed PAMM, funding is limited and available only on a competitive basis. Thus, rather that seeking some undue ''windfall'' from the disposition of property acquired with LSC funds, LSC is seeking to recoup funds in order to redistribute them to ensure that the scarce funds available are serving their original purpose to the maximum extent possible. If LSC were to permit recipients to retain all the proceeds from a disposition of property once they ceased being funded by LSC, it could be argued that the recipient would be reaping an undue windfall. At the least, the benefits of those dollars would no longer be assured of serving the original intended purpose. Accordingly, these provisions have not been changed. A provision has been, however, to reflect the current LSC policy that reimbursed funds are to be used to make additional grants to the field and that grants will generally be to recipients in the same service area which the funds originally supported.

A number of commenters noted that the requirements related to disposal in the case where a recipient ceases to receive funding are unclear if the recipient is undergoing a merger or takeover. In such a case, while the recipient may itself become a different (or non-existent) legal entity, the successor organization will be a funded recipient.

LSC agrees that this is a special circumstance which merits specific treatment in the PAMM. Accordingly, LSC has added a new provision to Section 7 to provide that when a recipient ceases to receive LSC funding because the recipient has merged with or is succeeded by another recipient, the recipient may transfer the property to the merged or successor recipient, provided that the recipient and the merged or successor recipient execute a successor in interest agreement, approved by LSC, which requires the merged or successor recipient to use the property for the primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts, and LSC regulations.

Section 8—Documentation and Recordkeeping Requirements

Section 8 contains requirements for the documentation of property acquisitions and disposals. This section is intended to ensure that recipients create and retain the required records in support of property acquisition and disposal decisions and LSC fund expenditures related thereto.

LSC received no comments addressing this section and it is adopted as proposed.

Section 9—Recipient Policies and Procedures

This section requires that recipients adopt written procurement procedures. This requirement stems from OMB Circular A–110 and is intended to ensure that recipients have standardized procurement procedures that are consistent with LSC requirements. LSC will not collect, review or approve such procedures, although a recipient will have to make them available to LSC upon request for LSC oversight and compliance purposes.

LSC received no suggestions for changing this section and it is adopted as proposed. One commenter, however, did pose a question about when LSC expects recipients to have developed and implemented their written procedures as required by Section 9. LSC expects recipients to comply with this section within 90 days of the effective date of this notice.

Property Acquisition and Management Manual

Sec. 1 Purpose and Scope.
Sec. 2 Definitions.
Sec. 3 Acquisition Procedures for Personal Property.
Sec. 4 Acquisition Procedures for Real Property.
Sec. 5 Retention and Use of Property Acquired with LSC Funds.
Sec. 6 Disposal of Personal Property Acquired with LSC Funds.
Sec. 7 Disposal of Real Property Acquired with LSC Funds.
Sec. 8 Documentation and Recordkeeping Requirements.
Sec. 9 Recipient Policies and Procedures.

Section 1 Purpose and Scope

The purpose of this PAMM is to set forth standards governing the acquisition, retention, use and disposal of personal and real property acquired in whole or in part with LSC funds. The standards set forth herein apply to both real and non-expendable personal property, but not apply to expendable personal property or services, except for contracts for services for capital improvements which are subject to the requirements of Section 4(f) herein.

The requirements set forth herein apply to acquisitions made on or after the PAMM's effective date as published in the **Federal Register**. For purchases of real property prior to the PAMM's effective date, the written agreement between the program and LSC will control. For prior acquisitions of personal property, the 1981 Property Manual will control.

Section 2 Definitions

(a) *Acquisition* means a purchase of real property or a purchase or lease of personal property made in whole or in part with LSC funds. For the purposes of this PAMM, recipients should treat a purchase or lease of related property as a single acquisition when the property can be readily obtained through a single contract with a single source.

(b) *Acquisition costs for real property* means the initial down payment and principle and interest on debt secured to finance the acquisition of the property, as provided in the December 31, 1997 preamble to the final rule on cost accounting, 45 CFR Part 1630.

(c) *Capital improvement* means an expenditure of an amount of LSC funds exceeding $10,000 to improve real property through construction or the purchase of immovable items which become an integral part of real property.

[5] By reference to 45 CFR 1630.12, Section 7(b) would clarify that income from the sale of property acquired with LSC funds is LSC derivative income subject to the requirements of the LSC Act, regulations, and other applicable law. As such, LSC derivative income becomes part of the LSC fund balance which may need to be returned to LSC if the fund balance amount exceeds the limits established by 45 CFR part 1628.

(d) *Lease* means a contract for the use of property during a specified period for a specified price.

(e) *LSC property interest agreement* means a formal written agreement between LSC and a recipient setting forth the terms of LSC's approval of the recipient's use of LSC funds to acquire real property.

(f) *Personal Property* means property of any kind, including tangible property (having physical existence), such as equipment, furniture, or books, or intangible (having no physical existence), such as copyrights or patents, but does not include supplies, such as stationery, paper clips, pens, etc., or real property or improvements to real property.

(g) *Property* means any real or personal property having a market value greater than $5,000 and a useful life of more than one year. For the purposes of Sections 6 and 7 related to the disposal of property, the relevant market value is the value at the time of disposal.

(h) *Purchase* means to obtain and take ownership of property through the payment of money or its equivalent.

(i) *Quote* means a quotation or bid from a potential source interested in selling or leasing property to a recipient, or providing services to a recipient for capital improvements.

(j) *Real property* means land, buildings, and appurtenances, including capital improvements thereto, but not including moveable personal property.

(k) *Source* means a supplier, vendor, or contractor who has agreed to provide property to a recipient through a purchase or lease agreement.

Section 3 Acquisition Procedures for Personal Property

(a) Before using more than $10,000 of LSC funds to make an acquisition of personal property, including, but not limited to, acquisitions of single items of over $10,000, a recipient shall consider competitive quotes from at least three potential sources for the property. A recipient may make individual requests for quotes and/or may use quotes listed in suppliers' online or printed catalogs, posted on electronic websites or contained in other publicly available materials.

(b) The selection of a source shall be on the basis of criteria established and documented by the recipient. Such criteria may include price alone or price in combination with other factors.

(c) Notwithstanding paragraph (a) of this section, a recipient may make a sole source acquisition when circumstances prevent the requesting of competitive quotes. When an acquisition is made on a sole source basis, the recipient shall maintain written documentation of the reason(s) for not obtaining competitive quotes.

(d) A recipient using more than $10,000 of LSC funds to acquire an individual item of personal property must request and receive LSC's prior approval pursuant to 45 CFR 1630.5(b)(2), whether or not the acquisition is to replace existing property, before making the expenditure.

(1) A request for prior approval shall include:

(i) Three quotes, if obtained; and

(ii) A letter or memorandum containing:

(A) A statement of need explaining how the acquisition will further the delivery of legal services to eligible clients;

(B) A brief description of the property to be acquired, including the make and manufacture of the item, the name of the source supplying the item, the quantity to be acquired, and the total dollar amount of the acquisition; and

(C) A brief description of the acquisition process, including the names of the potential sources who submitted quotes, the amounts of the quotes, the quantity of items offered by the potential sources, and a brief explanation of the reasons for selecting a particular source to supply the item(s). In the absence of quotes, the description should explain what circumstances prevented the recipient from obtaining quotes.

(2) A recipient making a grant application may include a prior approval request in the grant application. Any such request must identify the specific item proposed to be acquired and include a justification which complies with the requirements of paragraph (d)(1) of this section. In such a case, approval of the grant application shall be deemed an approval of the acquisition request, in accordance with 45 CFR 1630.5(b)(2) and 1630.5(c).

Section 4 Acquisition Procedures for Real Property

(a) Prior to acquiring real property with LSC funds, recipients shall conduct an informal market survey in order to identify and evaluate at least three potential sources. Recipients may retain a real estate agent or broker for the purposes of conducting a market survey, provided that the cost is reasonable.

(b) The evaluation of potential acquisitions of real property shall include consideration of:

(1) The total cost of the acquisition;

(2) The quality of the property to be acquired; and

(3) Other factors affecting the appropriateness of the property for the delivery of legal services, such as location, accessibility to the client population and public transportation, and proximity to courts and/or other government or social services agencies.

(c) Recipients shall conduct an analysis of the average annual cost of the acquisition, including the costs of a down payment, interest and principal payments on debt acquired to finance the acquisition, closing costs, renovation costs, and the costs of utilities, maintenance, and taxes, where applicable. The cost analysis shall include a comparison of:

(1) The estimated total costs of acquiring and occupying the property over the life of the financing of the acquisition; with

(2) The estimated total costs of leasing and occupying similar property over the same period of time.

(d) The use of LSC funds to acquire real property requires LSC's prior approval pursuant to 45 CFR 1630.5(b)(3). When requesting LSC prior approval of an acquisition of real property, recipients shall provide to LSC in writing:

(1) a statement of need explaining how the acquisition will further the delivery of legal services to eligible clients in terms of:

(i) The location of the property in terms of accessibility to program clients;

(ii) Trends in funding and program staffing levels in relation to space needs; and

(iii) Whether the property will replace or be in addition to existing program offices;

(2) a brief analysis comparing:

(i) The estimated average annual cost of the planned acquisition over the life of the financing of the acquisition, including the costs of maintenance, utilities, and taxes; with

(ii) The estimated average annual cost of leasing or purchasing other, similar property over the same period of time;

(3) A current, independent appraisal of a type sufficient to secure a mortgage;

(4) Documentation of board approval consisting of either a board resolution or board minutes demonstrating approval of the acquisition;

(5) A statement of handicapped accessibility sufficient to meet the requirements of 45 CFR 1624.5(c);

(6) A copy of an acquisition agreement, contract, or other document containing a description of the property and the terms of the acquisition; and

(7) An explanation of the anticipated financing of the acquisition including:

(i) The estimated total cost of the acquisition, including renovations, moving, and closing costs;

(ii) The source and amount of funds to be applied toward a down payment;

(iii) The source of funds to be applied toward a monthly mortgage payment, if any;

(iv) The monthly amount of principal and interest payments on debt secured to finance the acquisition, if any; and

(v) The source and estimated amounts of funds needed to cover moving, renovations, and closing costs.

(e) At the time of approving a recipient's use of LSC funds to acquire real property, LSC and the recipient shall enter into a written LSC property interest agreement, which shall include, at a minimum:

(1) Provisions consistent with Sections 5(a), 7(a) and 7(b) herein;

(2) An agreement by the recipient not to encumber the property without prior approval of LSC;

(3) An agreement by the recipient to record, in accordance with appropriate and applicable state law, LSC's interest in the property.

(f) Expenditures for capital improvements require LSC's prior approval pursuant to 45 CFR 1630.5(b)(4).

(1) When requesting LSC's prior approval of such expenditures, recipients shall provide to LSC in writing, the following:

(i) A statement of need explaining how the improvement will further the delivery of legal services to eligible clients;

(ii) A brief description of the improvement, including the nature of the work to be done, the name of the contractor performing the work, and the total expected cost of the improvement; and

(iii) A brief description of the contractor selection process, including the names of the contractors who submitted quotes, the amounts of the quotes, and a brief explanation of the reason(s) for selecting a particular contractor to perform the work.

(2) If an expenditure for capital improvements must be made on an emergency basis (i.e., to repair major structural elements of a building after a hurricane or earthquake, flooding, etc.), a recipient may seek an approval to move ahead with the project prior to providing the information provided in paragraph (f)(1) of this section. If such approval has been granted, the recipient must follow up with LSC by providing the required information in a timely manner.

Section 5 Retention and Use of Property Acquired With LSC Funds

(a) Subject to the requirements herein, recipients may use LSC funds to acquire and use personal and real property for the primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts and LSC regulations. Title to personal and real property purchased in whole or in part with LSC funds vests in the recipient subject to the conditions set out in paragraphs (b) through (f) of this section.

(b) Recipients may retain personal and real property purchased with LSC funds for as long as they continue to receive LSC funding. When a recipient ceases to receive LSC funding, property purchased with LSC funds shall be disposed of in accordance with the requirements of sections 6(d) or (e) and 7(c) or (d) herein, as appropriate.

(c) Recipients may retain personal property obtained through a lease using LSC funds for as long as they continue to receive LSC funds, subject to the terms of the lease. When a recipient ceases to receive LSC funding, property leased with LSC funds shall be disposed of in accordance with Section 6(b) herein.

(d) When using personal or real property acquired in whole or in part with LSC funds for the performance of an LSC grant or contract, recipients may use such property for other activities, provided that such other activities do not interfere with the performance of the LSC grant or contract, and provided that such other uses meet the requirements of paragraphs (e) and (f) of this section.

(e) If a recipient uses personal property acquired in whole or in part with LSC funds to provide services to another organization which engages in activity restricted by the LSC Act, regulations, or other applicable law, the recipient shall charge the other organization a fee which shall not be less than that which private non-profit organizations in the same locality charge for the same services under similar conditions.

(f) If a recipient uses real property acquired in whole or in part with LSC funds to provide space to another organization which engages in activity restricted by the LSC Act, regulations, or other applicable law, the recipient shall charge the other organization an amount of rent which shall not be less than that which private non-profit organizations in the same locality charge for the same amount of space under similar conditions.

(g) Recipients may copyright any work that is subject to copyright and was developed, or for which ownership was obtained, under an LSC grant or contract, provided that LSC reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use work copyrighted by recipients, when the work is obtained or developed in whole or in part with LSC funds.

Section 6 Disposal of Personal Property Acquired With LSC Funds

(a) During the term of an LSC grant or contract, recipients may dispose of items of personal property leased with LSC funds in accordance with the terms of the lease.

(b) When a recipient ceases to receive LSC funding, the recipient shall dispose of items of personal property leased with LSC funds in accordance with the terms of the lease.

(c) During the term of an LSC grant or contract, recipients may dispose of items of personal property purchased with LSC funds by:

(1) Trading in the property at the time of acquiring replacement property;

(2) Selling the property at a reasonable negotiated price, without advertising for quotes, where the property item has a current fair market value not exceeding $15,000;

(3) Selling the property after having advertised for and received quotes, where the current fair market value of the property item exceeds $15,000;

(4) Transferring the property to another recipient of LSC funds; or

(5) With the approval of LSC, transferring the property to another nonprofit organization serving the poor in the same service area.

(d) Recipients shall not dispose of items of personal property by sale, donation or other transfer of the property to the recipients' board members and employees.

(e) During the term of an LSC grant or contract, recipients selling personal property purchased with LSC funds may retain and use income from the sale according to the requirements of 45 CFR 1630.12 and 45 CFR 1628.3.

(f)(1) Except as provided in paragraph (g) of this section, when a recipient ceases to receive LSC funding, subject to the approval of LSC, recipients shall dispose of individual items of personal property purchased with LSC funds according to one of the following methods:

(i) The recipient may transfer the property to another recipient of LSC funds, in which case the recipient transferring the property shall be entitled to compensation in the amount of that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by non-LSC funds;

(ii) The recipient may transfer the property to another nonprofit organization serving the poor in the same service area, in which case LSC shall be entitled to compensation for that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by LSC funds;

(iii) The recipient may sell the property and retain the proceeds from the sale after compensating LSC for that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by LSC funds;

(iv) The recipient may retain the property, in which case LSC shall be entitled to compensation from the recipient for that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by LSC funds.

(2) Funds returned to LSC upon a disposition of property under this section shall be used by LSC to make emergency and other special grants to recipients. Such grants will generally be made to the same service area the returned funds originally supported.

(g) When a recipient ceases to receive LSC funding because the recipient has merged with or is succeeded by another recipient, the recipient may transfer the property to the merged or successor recipient, provided that the recipient and the merged or successor recipient execute a successor in interest agreement, approved by LSC, which requires the merged or successor recipient to use the property for the purpose of providing legal services for primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts, and LSC regulations.

Section 7 Disposal of Real Property Acquired With LSC Funds

(a) During the term of an LSC grant or contract, recipients may dispose of real property acquired with LSC funds by:

(1) Selling the property after having advertised for and received offers, in which case the recipient may retain and use the proceeds from the sale of the property for the purpose of delivering legal services to eligible clients; or

(2) Transferring the property to another recipient of LSC funds, in which case the recipient transferring the property shall be entitled to compensation in the amount of that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by non-LSC funds.

(b) During the term of an LSC grant or contract, recipients selling real property acquired with LSC funds may retain and use income from the sale of the property according to the requirements of 45 CFR 1630.12 and 45 CFR 1628.3.

(c)(1) When a recipient owning real property acquired with LSC funds ceases to receive funding from LSC, the recipient shall, with the approval of LSC, dispose of the real property according to one of the following methods:

(i) The recipient may transfer title to the property to another recipient of LSC funds, in which case the recipient transferring the property shall be entitled to compensation for that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by non-LSC funds;

(ii) The recipient may retain title to the property without further obligation to LSC after the recipient compensates LSC for that percentage of the property's current fair market value which is equal to the percentage of the property's acquisition cost which was borne by LSC funds;

(iii) The recipient may sell the property and compensate LSC for that percentage of the property's current fair market value which is equal to the percentage of the property's acquisition cost that was borne by LSC funds, after the deduction of actual and reasonable selling and fix-up expenses, if any.

(2) Funds returned to LSC upon a disposition of property under this section shall be used by LSC to make emergency and other special grants to recipients. Such grants will generally be made to the same service area the returned funds originally supported.

(d) When a recipient ceases to receive LSC funding because the recipient has merged with or is succeeded by another recipient, the recipient may transfer the property to the merged or successor recipient, provided that the recipient and the merged or successor recipient execute a successor in interest agreement, approved by LSC, which requires the merged or successor recipient to use the property for the primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts, and LSC regulations.

Section 8 Documentation and Recordkeeping Requirements

(a) Recipients shall account for personal property acquired with LSC funds according to the requirements of Sections 2–2.4 and 3–5.4(c) of the Accounting Guide for LSC Recipients.

(b) Recipients acquiring real property with LSC funds shall keep such records as are customary for the retention of real property in the jurisdiction where the property is located.

(c) Recipients shall account for income earned from the sale of real or personal property purchased with LSC funds in accordance with the requirements of 45 CFR 1630.12.

(d) Documentation of real property acquisitions shall consist of the acquisition contract, evidence of a market survey, cost or price analysis, and an explanation of the reason(s) for selecting a particular source, a copy of an independent appraisal of the property's market value, evidence of board approval of the acquisition, a statement of handicapped accessibility sufficient to meet the requirements of 45 CFR 1624.5(c), and a copy of the LSC property interest agreement required by Section 4(e) herein.

Section 9 Recipient Policies and Procedures

Recipients shall develop written policies and procedures which implement, at a minimum, the requirements of Sections 3 and 4 herein.

Victor M. Fortuno

General Counsel and Vice President for Legal Affairs

[FR Doc. 01–23008 Filed 9–12–01; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

LSC Regulations Review

AGENCY: Legal Services Corporation.

ACTION: Final Report of the LSC Regulations Review Task Force—Notice of Availability and Request for Public Comment.

SUMMARY: As part of its ongoing efforts to improve the administration of regulatory programs and requirements, Legal Services Corporation is providing notice of the availability of the Final Report of the LSC Regulations Review Task Force. LSC is also soliciting public comment on this Final Report. The Final Report and public comment thereon will be used toward the development of a regulatory agenda for 2001 and beyond.

DATES: Written comments must be received on or before October 29, 2001.

ADDRESSES: Written comments may be submitted by mail, fax or email to Mattie C. Condray at the addresses listed below.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002–4250; 202/336–8817 (phone); 202/336–8952 (fax); mcondray@lsc.gov.

SUPPLEMENTARY INFORMATION: LSC is issuing this notice to advise the public of the availability of the LSC Regulations Review Task Force Final Report, and to request public comment thereon.

The Regulations Review Task Force was an internal LSC staff task force charged with conducting a comprehensive review of LSC's regulations to support the LSC Board of Directors' Operations & Regulations Committee in the development of a Regulatory Agenda for 2001 and beyond. The members of the Task Force were Victor Fortuno, Vice President for Legal Affairs & General Counsel, Co-Chair; Randi Youells, Vice President for Programs, Co-Chair; John Eidleman, Program Counsel—Office of Program Performance; John Meyer, Acting Director—Office of Information Management; Bertrand Thomas, Program Counsel III—Office of Compliance and Enforcement and Mattie Condray, Senior Assistant General Counsel—Office of Legal Affairs. Laurie Tarantowicz, Assistant Inspector General and Legal Counsel, served as the OIG Liaison to the Task Force.

The Task Force conducted its work over the period of October, 2000, through August, 2001. The Final Report of the Task Force contains a review of LSC regulations to make sure that they properly implement current law and an analysis to determine whether any of LSC's regulations are confusing, unduly burdensome or pose interpretation or enforcement problems. The Final Report also suggest basic prioritization categories for action. The conclusions of the Task Force, as embodied in the Final Report, are endorsed by LSC senior management. The Final Report, dated August 24, 2001, was presented to the Operations and Regulations Committee at a meeting on September 7, 2001, in Alexandria, Virginia.

With the issuance of the Final Report of the Task Force, LSC is now seeking public comment on the Report. Interested parties are encouraged to review the Final Report and provide comments thereon. Comments will be accepted through the date listed in this notice. A full copy of the Final Report can be found on the LSC website at: http://www.lsc.gov/FOIA/other/rrtf_frpt.pdf. Interested parties may also request a copy by contacting Mattie Condray at the addresses listed above.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 01–23039 Filed 9–12–01; 8:45 am]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

Firstenergy Nuclear Operating Company, Ohio Edison Company: Pennsylvania Power Company: Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License (FOL) Nos. DPR–66 and NPF–73, issued to FirstEnergy Nuclear Operating Company, *et al.* (the licensee), for operation of BVPS–1 and 2, located in Shippingport, Pennsylvania. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed

The proposed action would revise the FOL and the technical specifications (TSs) to reflect an increased licensed maximum steady state reactor core power level of 2689 megawatts thermal (MWt), an increase of approximately 1.4% as compared to the current licensed maximum steady state reactor core power level of 2652 MWt. This increase is facilitated by taking advantage of the reduced feedwater flow measurement uncertainty associated with utilization of the Caldon Leading Edge Flowmeter.

The proposed action is in accordance with the licensee's application dated January 18, 2001 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML010230096), as supplemented by letters dated February 20 (ADAMS Accession No. ML010540305), April 12 (ADAMS Accession No. Ml011130105), May 7 (ADAMS Accession No. ML011340076), May 18 (ADAMS Accession No. ML011440046), June 9 (3 letters) (ADAMS Accession Nos. ML011640192, ML011640189, and ML011640086), June 26 (ADAMS Accession No. ML011840215), and June 29 (ADAMS Accession No. ML011870434), 2001.

The Need for the Proposed Action

The proposed action would allow an increase in power generation at BVPS–1 and 2 to provide additional electrical power for distribution to the grid. Power uprate has been widely recognized by the industry as a safe and cost-effective method to increase generating capacity.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action does not present a significant environmental impact.

The Commission has previously evaluated the environmental impacts of operation of BVPS–1 and 2, as described in the final environmental statements (FESs) for BVPS–1 and 2, dated July 31, 1973, and September 30, 1985, respectively (Nuclear Documents Systems [NUDOCS] Accession Nos. 8907200125 and 8509300559, respectively). The findings and conclusions of the BVPS–1 and 2 FESs remain bounding and valid for the proposed power uprate conditions.

With regard to dose consequences of postulated design-basis accidents (DBAs), the licensee has confirmed that the calculated dose consequences resulting from a postulated DBA at the exclusion area boundary, low population zone, and the control room remain within the acceptable regulatory guidelines of Title 10 of the Code of Federal Regulations (10 CFR) part 20, 10 CFR part 100, and 10 CFR part 50, appendix A, General Design Criterion 19. The NRC staff found the calculated dose consequence results of a postulated BVPS–1 Main Steam Line Break DBA acceptable in License Amendment No. 236 dated March 12, 2001 (ADAMS Accession No. ML010460384). The NRC staff found all other calculated dose consequence results for postulated BVPS–1 and 2 DBAs acceptable in License Amendments Nos. 237 and 119, dated March 22, 2001 (ADAMS Accession No. ML010610212) for BVPS–1 and 2, respectively (the environmental assessment for this action was published in the **Federal Register** on March 15, 2001 (66 FR 15147)). The licensee's current shielding and DBA dose consequence analyses assume a maximum steady state power level of 2766 MWt and 2705 MWt, respectively. These values bound the proposed increase in the maximum licensed steady state reactor core power level to 2689 MWt and the .6% core power measurement uncertainty that will result from the use of the Caldon Leading Edge Flowmeter technology.

Occupational doses for normal operations will be maintained within acceptable limits by the site ALARA (as-low-as-reasonably-achievable) program.

With regard to potentially increased normal radiological releases, the BVPS–1 and 2 gaseous and liquid waste system designs were based on operation at a maximum steady state reactor core power level of 2766 MWt and, consequently, can accommodate the effects of the power uprate satisfactorily. The gaseous and liquid effluent releases are expected to increase from current values by no more than the percentage increase in power level. Effluents are controlled administratively by the Offsite Dose Calculation Manual which ensures that offsite release concentrations and doses are maintained well within the limits of 10 CFR part 50, Appendix I. Normal average gaseous releases remain limited to a small fraction of 10 CFR part 20, appendix B, Table 2 limits.

With respect to potentially increased normal solid waste generation, the volume of solid waste would not be expected to increase significantly as compared to that generated at the current power levels, since the power uprate neither appreciably impacts installed equipment performance nor does it require drastic changes in system operation. Only minor, if any, changes in solid waste generation volume are expected. As the estimated coolant activity does not change appreciably and maintenance and operational practices are not expected to change, the calculated specific activity of solid waste is not expected to change.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. BVPS–1 and 2 employ a closed-loop cooling system that includes natural draft cooling towers (one per unit) to dissipate waste heat to the atmosphere. All water used at the plant is recycled within the closed-loop cooling system except station makeup that comes from the Ohio River via the service water system. The Beaver Valley National Pollutant Discharge Elimination System Permit Impact (NPDES) permit (Permit No. PA0025615) does not place any absolute operating limits on either flow or temperature for discharging into the Ohio river. Due to the design of the closed-loop cooling system and the relatively small increase in waste heat generated due to the power uprate, the minimal potential increase in flow and temperature to the Ohio river will have no adverse impact on the environment. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the FESs for BVPS–1 and 2, dated July 31, 1973, and September 30, 1985, respectively.

Agencies and Persons Consulted

On August 10, 2001, the NRC staff consulted with the Pennsylvania State official, Mr. Larry Ryan of the Pennsylvania Department of Environmental Protection, Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Further details with respect to the proposed action may be found in the licensee's letter dated January 18, 2001, as supplemented by letters dated February 20, April 12, May 7, May 18, June 9 (3 letters), June 26, and June 29, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of September 2001.

For the Nuclear Regulatory Commission.

Lawrence J. Burkhart,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–22978 Filed 9–12–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Resolution of Degraded and Nonconforming Conditions; (''Generic Letter 91–18 Process'')—(MB2530)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a regulatory issue summary (RIS) to make available to the nuclear power industry updated staff guidance on the resolution of degraded and nonconforming conditions. Earlier guidance on this subject was provided to the industry as an attachment to Generic Letter 91–18, Revision 1, issued on October 8, 1997. The updated guidance will reflect relevant NRC regulatory process and regulation changes that have occurred since 1997. The NRC is seeking comment from interested parties on the clarity and utility of the proposed RIS and the draft updated guidance under the SUPPLEMENTARY INFORMATION heading. The NRC will consider the comments received in its final evaluation of the proposed RIS and updated guidance. Comments should address the contents of the guidance but not the regulations associated with it.

This **Federal Register** notice is available through the NRC's document management system (ADAMS) under accession number ML012420393. The draft updated guidance under the SUPPLEMENTARY INFORMATION heading is also provided in comparative text format on the NRC Web site at *http://www.nrc.gov/NRC/GENACT/GC/RI/*

DRAFT/index.html to better show the substantive revisions to the 1997 version of the guidance.

DATES: Comment period expires October 29, 2001. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSEES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001, and cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T–6D59), Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION, CONTACT: Eileen McKenna at (301) 415–2189 or by e-mail to *emm@nrc.gov.*

SUPPLEMENTARY INFORMATION:

NRC Regulatory Issue Summary 2001–xx Resolution of Degraded and Nonconforming Conditions ''Generic Letter 91–18 Process''

Addressees

All holders of operating licenses for nuclear power reactors, including those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, and all holders of operating licenses for nonpower reactors, including those whose licenses no longer authorize operation.

Intent

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to inform licensees that NRC Inspection Manual Part 9900, Technical Guidance, ''Resolution of Degraded and Nonconforming Conditions,'' has been revised. The revised inspection guidance reflects relevant changes that have been made to NRC regulations and NRC policies and practices since 1997. This RIS requires no action or written response on the part of an addressee.

Background Information

NRC staff inspection guidance on the resolution of degraded and nonconforming conditions at licensed reactor facilities is contained in NRC Inspection Manual Part 9900, Technical Guidance, ''Resolution of Degraded and Nonconforming Conditions.'' This guidance has previously been provided to licensees for information, most recently in Revision 1 of Generic Letter (GL) 91–18, which was issued on October 8, 1997.

The NRC reviewed this inspection guidance to assess its currency and concluded that the guidance needed to be updated to reflect regulatory changes that have occurred since 1997, including the implementation of the revised reactor oversight process, the requirement that licensees appropriately assess and manage the increase in risk related to proposed maintenance activities (10 CFR 50.65(a)(4)), and the revision of 10 CFR 50.59 to remove ambiguity in the change control process. The attachment to this RIS contains the revised Part 9900 section on the resolution of degraded and nonconforming conditions. This guidance supersedes in its entirety the guidance previously provided in Revision 1 of GL 91–18. The Part 9900 guidance on operability that was originally provided in GL 91–18 has not been revised.

Summary of Issue

NRC Inspection Manual, Part 9900, Technical Guidance, ''Resolution of Degraded and Nonconforming Conditions,'' provides guidance to NRC inspectors for reviewing the actions of licensees to restore or establish acceptable conditions following the discovery of degraded or nonconforming conditions in plant structures, systems, or components (SSCs). The governing NRC requirements for degraded or nonconforming conditions affecting the SSCs may collectively be viewed as a process for licensees to develop a basis for continued operation or to place the facility in a safe condition and take prompt corrective action. This process has not fundamentally changed from that outlined in the previous version of the Part 9900 guidance on resolution of degraded or nonconforming conditions. The attached revised Part 9900 guidance addresses related guidance and requirements for resolution of degraded and nonconforming conditions, and updates information that has changed as a result of changes to regulations or to NRC policies and procedures.

Backfit Discussion

This RIS requires no action or written response and, therefore, is not a backfit under 10 CFR 50.109. Consequently, the staff did not perform a backfit analysis.

Federal Register Notification

A notice of opportunity for public comment was published in the **Federal Register** on September xx, 2001 (66 FR xxxxx), to give interested parties an opportunity to suggest ways for improving the guidance. The staff concludes that this RIS and the attached NRC inspection guidance are informational and pertain to a staff position that does not represent a departure from current regulatory requirements and practice.

Paperwork Reduction Act Statement

This RIS does not request any information collection.

Please refer any questions that you may have about this matter to the technical contact identified below.

David B. Matthews,
Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

Technical Contact: Eileen McKenna, NRR, 301–415–2189, E-mail: *emm@nrc.gov.*

Attachments:

1. NRC Inspection Manual Part 9900, Technical Guidance, ''Resolution of Degraded and Nonconforming Conditions''
2. List of Recently Issued NRC Regulatory Issue Summaries

Attachment 1

NRC Inspection Manual

Part 9900: Technical Guidance

Resolution of Degraded and Nonconforming Conditions

Draft—August 2001

Resolution of Degraded and Nonconforming Conditions

Table of Contents

	Page
1.0 Purpose and Scope	1
2.0 Definitions	2
2.1 Licensing Basis	2
2.2 Design Basis	2
2.3 Degraded Condition	2
2.4 Nonconforming Condition	2
2.5 Full Qualification	3
2.6 Operable/Operability	3
3.0 Background	3
4.0 Discussion of Notable Provisions	3
4.1 Public Health and Safety	3
4.2 Operability Determinations	3
4.3 The Licensing Basis and 10 CFR part 50, appendix B	4
4.4 Discovery of an Existing but Previously Unanalyzed Condition or Accident	4
4.5 Establishing a Basis for Continued Operation	5
4.6 Justification for Continued Operation	5
4.7 Reasonable Assurance of Safety	7
4.8 Evaluation of Compensatory Measures	7
4.9 Maintenance Activities	8
4.10 Final Corrective Action	8
5.0 Enforcement	10
6.0 Reference	10

Resolution of Degraded and Nonconforming Conditions

1.0 Purpose and Scope

To provide guidance to NRC inspectors on resolution of degraded and nonconforming conditions affecting the following systems, structures, or components (SSCs) normally described in the updated final safety analysis report (UFSAR):

(i) Safety-related SSCs, which are those relied upon to remain functional during and following design basis events (a) to ensure the integrity of the reactor coolant pressure boundary, (b) to ensure the capability to shut down the reactor and maintain it in a safe shutdown condition, or (c) to ensure the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures comparable to the 10 CFR part 100 guidelines. Design basis events are defined the same as in 10 CFR 50.49(b)(1).

(ii) All SSCs whose failure could prevent satisfactory accomplishment of any of the required functions identified in (i) (a), (b), and (c).

(iii) All SSCs relied on in the safety analyses or plant evaluations that are a part of the plant's licensing basis. These analyses and evaluations include those submitted to support license amendment requests, exemption requests, or relief requests, and those submitted to demonstrate compliance with the Commission's regulations, such as the regulations for fire protection (10 CFR 50.48), environmental qualification (10 CFR 50.49), pressurized thermal shock (10 CFR 50.61), anticipated transients without scram (10 CFR 50.62), and station blackout (10 CFR 50.63).

(iv) Any SSCs subject to 10 CFR part 50, appendix B.

(v) Any SSCs subject to 10 CFR part 50, appendix A, criterion 1.

(vi) Any SSCs explicitly subject to facility Technical Specifications (TS).

(vii) Any SSCs subject to facility TS through the definition of operability (i.e., support SSCs outside TS).

This guidance is intended for NRC inspectors who are reviewing actions of licensees that hold an operating license. Although this guidance generally reflects existing staff practices, application to specific plants may constitute a backfit. Consequently, significant differences in licensee practices should be discussed with NRC management to ensure that the guidance is applied in a reasonable and consistent manner for all licensees.

If, during an inspection, an NRC inspector obtains information reasonably indicating a possible degraded or nonconforming condition affecting any of the SSCs listed above, the inspector should promptly inform the licensee so the licensee can promptly evaluate the SSC's status.

This guidance is only applicable to the discovery of degraded or nonconforming conditions. In some instances, however, a licensee may find it necessary to take actions that reduce the functional capability of SSCs in order to perform maintenance. For these cases, applicable guidance on the conduct of the pre-maintenance risk assessment and the management of the increase in risk caused by the maintenance activities (including the relationship with TS, risk assessment in accordance with 10 CFR 50.65(a)(4), and compensatory measures) is contained in Regulatory Guide 1.182 (see also Inspection Manual Part 9900, "Guidance on Voluntary Entry Into Limiting Conditions for Operation Action Statements To Perform Preventive Maintenance").

2.0 Definitions

2.1 Licensing Basis

The licensing basis comprises the set of NRC requirements applicable to a specific plant, and a licensee's written commitments for assuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all docketed and still effective modifications and additions to such commitments over the life of the license). The licensing basis includes the NRC regulations contained in 10 CFR parts 2, 19, 20, 21, 30, 40, 50, 51, 55, 72, 73, and 100 and the appendices thereto; orders; license conditions; exemptions; and TS. It also includes the plant-specific design basis information defined in 10 CFR 50.2 and documented in the most recent UFSAR (as required by 10 CFR 50.71) and the licensee's commitments remaining in effect that were made in docketed licensing correspondence such as licensee responses to NRC bulletins, generic letters, and enforcement actions, as well as licensee commitments documented in NRC safety evaluations and licensee event reports.

2.2 Design Basis

Design basis is that body of plant-specific design basis information defined in 10 CFR 50.2.[1]

2.3 Degraded Condition

A condition of an SSC, potentially affecting operability, in which quality or functional capability has been reduced by mechanisms such as aging, erosion, corrosion, or improper operation or maintenance.

2.4 Nonconforming Condition

A condition of an SSC, potentially affecting operability, that involves a failure to meet requirements or licensee commitments because of such factors as improper design, testing, construction, or modification. The following are examples of nonconforming conditions:

1. A condition fails to conform to one or more applicable codes or standards specified in the UFSAR.

2. As-built equipment or as-modified equipment does not meet UFSAR descriptions.

3. Operating experience or engineering reviews demonstrate a design inadequacy.

4. Documentation required by NRC requirements such as 10 CFR 50.49 is unavailable or deficient.

[1] Guidance and examples for identifying 10 CFR 50.2 design bases are contained in Regulatory Guide 1.186, which endorses Appendix B to the Nuclear Energy Institute (NEI) document NEI 97–04, "Guidance and Examples for Identifying 10 CFR 50.2 Design Bases."

2.5 Full Qualification

Full qualification is conformance to all aspects of the licensing basis, including codes and standards, design criteria, safety analyses, and commitments.

2.6 Operable/Operability

The Standard Technical Specifications define operable or operability as follows:

A system, subsystem, train, component, or device shall be operable or have operability when it is capable of performing its specified functions and when all necessary attendant instrumentation, controls, electrical power, cooling or seal water, lubrication or other auxiliary equipment that are required for the system, subsystem, train, component, or device to perform its function(s) are also capable of performing their related support function(s).

This definition of operable and operability specifically applies to SSCS covered by its and to those support systems that fall within the definition. However, the same definition may be applied generically to all SSCs covered by this guidance when discussing their operability (ability to perform their functions).

3.0 Background

A nuclear power plant's SSCs are designed to meet NRC requirements, satisfy the licensing basis, and conform to specified codes and standards. For degraded or nonconforming conditions of these SSCs, the TS may require the licensee to take actions. The provisions of Criterion XVI of 10 CFR Part 50, Appendix B, may apply, requiring the licensee to promptly identify and correct conditions adverse to safety or quality. Collectively, these requirements may be viewed as a process for licensees to develop a basis to continue operation or to place the plant in a safe condition and take prompt corrective action. Reporting may also be required in accordance with 10 CFR 50.72, 50.73, and 50.9(b), 10 CFR part 21, and the TS.

Changes to the facility in accordance with 10 CFR 50.59 may be made as part of the corrective action required by Appendix B. The process displayed in the attached chart, "Resolution of Degraded and Nonconforming Conditions," identifies these and other provisions that a licensee may follow to restore or establish acceptable conditions. These provisions are success paths that enable licensees to continue safe operation of their facilities.

4.0 Discussion of Notable Provisions

4.1 Public Health and Safety

All success paths, whether specifically stated or not, are directed first at ensuring public health and safety and second at restoring the SSCs to the licensing basis of the plant as an acceptable level of safety. Identification of a degraded or nonconforming condition that may pose an immediate threat to public health and safety requires the plant to be placed in a safe condition.

Technical Specifications address the safety systems, installed instrumentation, and process variables and provide Limiting Conditions for Operation (LCOs), Actions, Surveillance Requirements, Design Features, and Administrative Controls required to ensure public health and safety.

4.2 Operability Determinations

NRC Inspection Manual Part 9900, ''Operable/Operability: Ensuring the Functional Capability of a System or Component,'' provides guidance on licensee responsibilities to assess whether systems or components continue to be operable when degraded or nonconforming conditions have been identified. The basis for continued operation (as supported by an operability determination) is further discussed in Sections 4.5 and 4.6 below.

Other situations where operability must be assessed include the discovery of an error in a design calculation, nonconformance with an industry standard, or an incorrect underlying assumption for ensuring the operability of a structure, system, or component. With the explicit inclusion of an affected requirement in facility TS, the introduction of any discrepancies can result in the affected requirement being nonconservative or the inability of a licensee to satisfy an LCO or surveillance requirement (depending upon the nature of the issue). Guidance related to non-conservative TS is provided in Administrative Letter 98–10, ''Dispositioning of Technical Specifications That Are Insufficient to Assure Plant Safety.'' If a licensee does not satisfy an LCO or surveillance requirement that is included explicitly in the TS, then associated actions are taken or relief is sought (see section 4.6 below).

In some cases, a design calculation or industry standard is used to define surveillance acceptance criteria but the specifics are not explicitly included in the TS (e.g., the TS surveillance requirement is to verify a capability for providing power or cooling and a reference document or the TS bases discuss the details of how this is determined). If an error in a calculation or nonconformance with an industry standard is found in these cases, the licensee should assess operability. If the affected SSC is determined to be inoperable, the TS define the appropriate actions. If, however, the affected SSC is determined to be operable, plant operation may continue, and the discrepancy resolved as further discussed in this guidance.

4.3 The Licensing Basis and 10 CFR 50, Appendix B

The design and operation of a nuclear plant must be consistent with its licensing basis. Whenever degraded or nonconforming conditions of SSCs subject to Appendix B [2] are identified, Appendix B requires prompt corrective action to correct or resolve the condition. The licensee must establish a schedule for completing the corrective action. The timeliness of the corrective action should be commensurate with the safety significance of the issue. The time period within which corrective action must be completed begins with the discovery of the condition, not when it is reported to the NRC.

In determining whether the licensee is making reasonable efforts to complete corrective action promptly, NRC will consider whether corrective action was taken at the first opportunity, taking into account safety significance, effects on operability, significance of degradation, and what is necessary to implement the corrective action. Factors that the NRC may consider are the amount of time required for design, review, approval, or procurement of the repair or modification; the availability of specialized equipment to perform the repair or modification; and whether the plant must be in hot or cold shutdown to implement the actions. The NRC expects licensees to explicitly justify time periods longer than the next refueling outage in the deficiency tracking documentation.

4.4 Discovery of an Existing But Previously Unanalyzed Condition or Accident

In the course of its activities, the licensee may discover a previously unanalyzed condition or accident. Upon discovery of an existing but previously unanalyzed condition or accident that significantly degrades plant safety, the licensee is required to report it in accordance with 10 CFR 50.72 and 50.73, and put the plant in a safe condition. (See NUREG–1022, Revision 2, for guidance on conditions considered to significantly degrade plant safety.)

For a previously unanalyzed condition or accident that is considered a significant safety concern but is not part of the design or licensing basis, the licensee may subsequently be required to take additional action after consideration of backfit issues (see 10 CFR 50.109(a)(5)).

4.5 Establishing a Basis for Continued Operation

The license authorizes the licensee to operate the plant in accordance with applicable regulations, license conditions, and the TS. If an SSC is degraded or nonconforming but operable, the TS establish an acceptable basis to continue to operate.[3] When safety-related equipment is affected, the licensee must promptly identify and correct the condition adverse to safety or quality in accordance with 10 CFR part 50, appendix B, criterion XVI.

The basis for a licensee's authority to continue to operate arises because the TS contain the specific characteristics and conditions of operation necessary to avoid the possibility that an abnormal situation or event will give rise to an immediate threat to public health and safety. If the TS are satisfied, and required equipment is operable, and the licensee is correcting the degraded or nonconforming condition in a timely manner, continued plant operation does not pose an undue risk to public health and safety.

When a licensee finds itself in noncompliance with a regulation, immediate action such as shutting down the plant is not necessarily required, unless otherwise specified by NRC requirements. In such situations, the licensee should first determine if there is an immediate safety issue as a result of the noncompliance with a regulation. The licensee should further determine what other NRC requirements apply to the situation (e.g., 10 CFR part 50, appendix B, criterion XVI, or 10 CFR 50.12) and take the required action.

In developing a basis for continued operation, licensees should consider matters such as the following:

- The availability, reliability, and operability of redundant or backup equipment
- Compensatory measures, including limited reliance on administrative controls
- The safety function and the events protected against
- Conservatism and margins
- Probability of needing the safety function
- Probabilistic risk assessment (PRA) or Individual Plant Evaluation (IPE) results that determine how operating the facility in the proposed manner will impact the core damage frequency or conditional core damage probability
- Plant-specific and industry experience, testing, and research

The NRC concern with respect to a licensee's basis for continued operation is that the operability decision be correct, the documentation of the licensee's actions be appropriate, and any required submittals to the NRC (see below) be complete. The licensee's documentation of its basis for continued operation is normally proceduralized through the existing plant record system and is subject to NRC inspection (Inspection Procedure 71111.15).

4.6 Justification for Continued Operation

Under certain defined and limited circumstances, the licensee may find that strict compliance with the TS or a license condition would cause an unnecessary plant action not in the best interest of public health and safety. NRC review and action is required before the licensee takes actions that are not in compliance with the license conditions or the TS, except in certain emergency situations when 10 CFR 50.54(x) and (y) are applied. A Justification for Continued Operation (JCO) is the licensee's technical basis for requesting authorization from the NRC to operate in a manner that is prohibited (e.g., outside TS or license conditions). The preparation of a JCO does not constitute authorization to continue operation. See Part 9900 guidance on Notices of Enforcement Discretion (NOED) for information on the NRC process for exercising enforcement discretion with regard to limiting conditions for operation in power reactor TS or license conditions.

Other documents or processes that are not equivalent to and do not perform the same function as the JCO defined above may also be referred to as JCOs. For example, NRC generic communications may provide direction on how to establish bases for continued operation for specific issues, and licensees may not be required to submit these

[2] Appendix B is only applicable to safety-related SSCs. However, NRC expects licensees to take corrective action for any nonconformances with the UFSAR consistent with Appendix B, Criterion XVI, in a time frame commensurate with safety.

[3] An exception to this general statement is the case of a facility that is experiencing significant performance problems that have led to issuance of a confirmatory action letter or order preventing that licensee from continuing to operate or resuming operation until approval is granted by the NRC.

determinations to the NRC. In Generic Letter 88–07, ''Environmental Qualification of Electrical Equipment,'' and Generic Letter 87–02, ''Seismic Adequacy,'' these determinations are referred to as ''JCOs.'' Licensees should continue to follow earlier guidance regarding the preparation and use of these determinations for specific issues. When reviewing licensee actions in response to a degraded or nonconforming condition, the NRC considers the content of the documentation, not its name.

4.7 Reasonable Assurance of Safety

For SSCs that are not expressly subject to TS and are determined to be inoperable, the licensee should assess the reasonable assurance of safety using considerations similar to those discussed in Section 4.5 above. If reasonable assurance of safety exists, then the facility may continue to operate while prompt corrective action is taken.

4.8 Evaluation of Compensatory Measures

When evaluating the impact of a degraded or nonconforming condition on plant operation and on the operability of SSCs, a licensee may decide to implement a compensatory measure as an interim step to restore operability or to otherwise enhance the capability of SSCs until the final corrective action is completed. This guidance concerns interim measures implemented before maintenance to restore the condition of the SSC has begun (also see Section 4.9 below).

Reliance on a compensatory measure for operability should be an important consideration in establishing the ''reasonable time frame'' for completing the corrective action process. The NRC normally expects that conditions requiring interim compensatory measures to demonstrate operability will be resolved more quickly than conditions that do not require compensatory measures to show operability, since reliance on interim measures suggests a greater degree of degradation. Similarly, if an operability determination relies upon operator action, NRC expects the nonconforming condition to be resolved expeditiously.

With respect to the use of compensatory measures, the approved regulatory guidance (Regulatory Guide 1.187, endorsing NEI 96–07, Revision 1) for implementating the revised 10 CFR 50.59 rule states:

If an interim compensatory action is taken to address the condition and involves a temporary procedure or facility change, 10 CFR 50.59 should be applied to the temporary change. The intent is to determine whether the temporary change/compensatory action itself (not the degraded condition) impacts other aspects of the facility or procedures described in the UFSAR.

In considering whether a compensatory measure may affect other aspects of the facility, a licensee should pay particular attention to ancillary aspects of the compensatory measure that may result from actions taken to directly compensate for the degraded condition.

As an example, suppose a licensee plans to close a valve to isolate a leak. Although that action would stop the leak, it may affect flow distribution to other components or systems, complicate required operator responses, or have other effects that should be evaluated before the compensatory measure is implemented. In accordance with 10 CFR 50.59, if the evaluation determines that implementation of the compensatory action itself would involve a TS change or otherwise require NRC approval under the evaluation criteria, NRC approval, in accordance with 10 CFR 50.90 and 50.92, is required before implementation of the compensatory action. If any SSC would not be operable (in accordance with the TS) unless the compensatory measure was in place, the licensee must follow the TS requirements (see also Section 4.6 above).

4.9 Maintenance Activities

After identifying a degraded or nonconforming condition, a licensee will typically perform corrective maintenance to restore the facility to its as-designed condition. Paragraph 50.65(a)(4) requires licensees to assess and manage the increase in risk that may result from proposed maintenance activities. The conduct of maintenance may also involve other temporary procedure or facility alterations to allow the maintenance to be performed or to reduce risk. Such alterations include jumpering terminals, lifting leads, and using temporary blocks, bypasses, or scaffolding. These temporary alterations associated with maintenance are to be assessed as part of the 10 CFR 50.65(a)(4) risk assessment and, consistent with NRC regulatory guidance, a separate 10 CFR 50.59 review of the risk reduction measures is not required (except under limited conditions; see Regulatory Guide 1.182 endorsing Section 11 of the NEI (formerly the Nuclear Management and Resources Council (NUMARC)) document NUMARC 93–01, ''Assessment of Risk Resulting From Performance of Maintenance Activities,'' for further information).

4.10 Final Corrective Action

The licensee is responsible for corrective action. A licensee's range of corrective action may involve (1) full restoration to the UFSAR-described condition such as through performance of corrective maintenance (see Section 4.9 above), (2) NRC approval for a change to the licensing basis to accept the as-found condition as is, or (3) some modification of the facility other than restoration to the condition as described in the UFSAR. If corrective action is taken to restore the degraded or nonconforming condition, no 10 CFR 50.59 evaluation is required. The 10 CFR 50.59 process applies when the final resolution of the degraded or nonconforming condition differs from the established UFSAR requirement. At this point, the licensee plans to make a change to the facility or procedures as described in the UFSAR. The proposed change is now subject to the review process established by 10 CFR 50.59. A change can be safe, but still require NRC approval. The proposed final resolution may require staff review and approval without affecting the continued operation of the plant, because interim operation is being governed by the processes for determining operability and taking corrective action (Appendix B).

In two situations, the identification of a final resolution or final corrective action triggers a 10 CFR 50.59 review, unless another regulation applies (e.g., 10 CFR 50.55a): (1) when a licensee decides as the final corrective action to change its facility or procedures to something other than full restoration to the UFSAR-described condition, and (2) when a licensee decides to change its licensing basis, as described in the UFSAR, to accept the degraded or nonconforming condition as its revised licensing basis. Each of these situations is discussed in greater detail below.

Change to Facility or Procedures

In the first situation, the licensee's proposed final resolution of the degraded or nonconforming condition includes other changes to the facility or procedures to cope with the uncorrected or only partially corrected nonconforming condition. Rather than fully correcting the nonconforming condition, the licensee decides to restore capability or margin by making another change. In this case, the licensee must evaluate the change from the UFSAR-described condition to the final condition in which the licensee proposes to operate its facility. If the 10 CFR 50.59 evaluation concludes that a change to the TS is involved or the change meets any of the evaluation criteria specified in the rule for prior NRC approval, a license amendment must be requested, and the corrective action process is not complete until the approval is received or some other resolution occurs.

Change to the Licensing Basis

In the other situation the licensee proposes to change the licensing basis to accept the as-found nonconforming condition. In this case, the 10 CFR 50.59 review covers the change from the UFSAR-described condition to the existing condition in which the licensee plans to remain (i.e., the licensee will exit the corrective action process by revising its licensing basis to document acceptance of the condition). If the 10 CFR 50.59 evaluation concludes that a change to the TS is involved or the change meets any of the evaluation criteria specified in the rule for prior NRC approval, a license amendment must be requested and the corrective action process is not complete until the approval is received or some other resolution occurs. To resolve the degraded or nonconforming condition without restoring the affected equipment to its original design, a licensee may need to obtain an exemption from 10 CFR Part 50 in accordance with 10 CFR 50.12 or relief from a design code in accordance with 10 CFR 50.55a. The use of 10 CFR 50.59, 50.12, or 50.55a in fulfillment of Appendix B corrective action requirements does not relieve the licensee of the responsibility to determine the root cause, to examine other affected systems, and to report the original condition, as appropriate.

In both of these situations, the need to obtain NRC approval for a change does not affect the licensee's authority to operate the plant. The licensee may make mode changes, restart from outages, etc., provided that necessary equipment is operable and the degraded condition does not violate the TS or the license. The basis for this position was previously discussed in Section 4.5.

5.0 Enforcement

If the licensee, without good cause, does not correct the degraded or nonconforming condition at the first available opportunity, the staff will determine whether the licensee has failed to take prompt corrective action in accordance with 10 CFR part 50, appendix B, criterion XVI. If the NRC concludes that the appendix B requirements were not met or the operability determination is not valid, the NRC staff will take appropriate regulatory action, consistent with the NRC oversight process and the enforcement policy for reactors.

Completing corrective action within a reasonable time frame does not prevent the NRC from taking action for the root causes of the degraded or nonconforming condition or for violations of other regulatory requirements. The nonconforming condition may have resulted from earlier changes performed without a 10 CFR 50.59 evaluation or from inadequate reviews. The staff may determine that the discovered nonconforming condition involves a change to the TS or otherwise requires prior approval as specified in 10 CFR 50.59. In such cases, enforcement action is appropriate to address the time from when the degraded or non-conforming conditions were created until the time of discovery. The NRC's action will take into account the safety significance of the facility conditions that existed while the SSC was in the degraded or nonconforming condition.

6.0 Reference

See the attached chart, ''Resolution of Degraded and Nonconforming Conditions.'' END

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 5th day of September 2001.

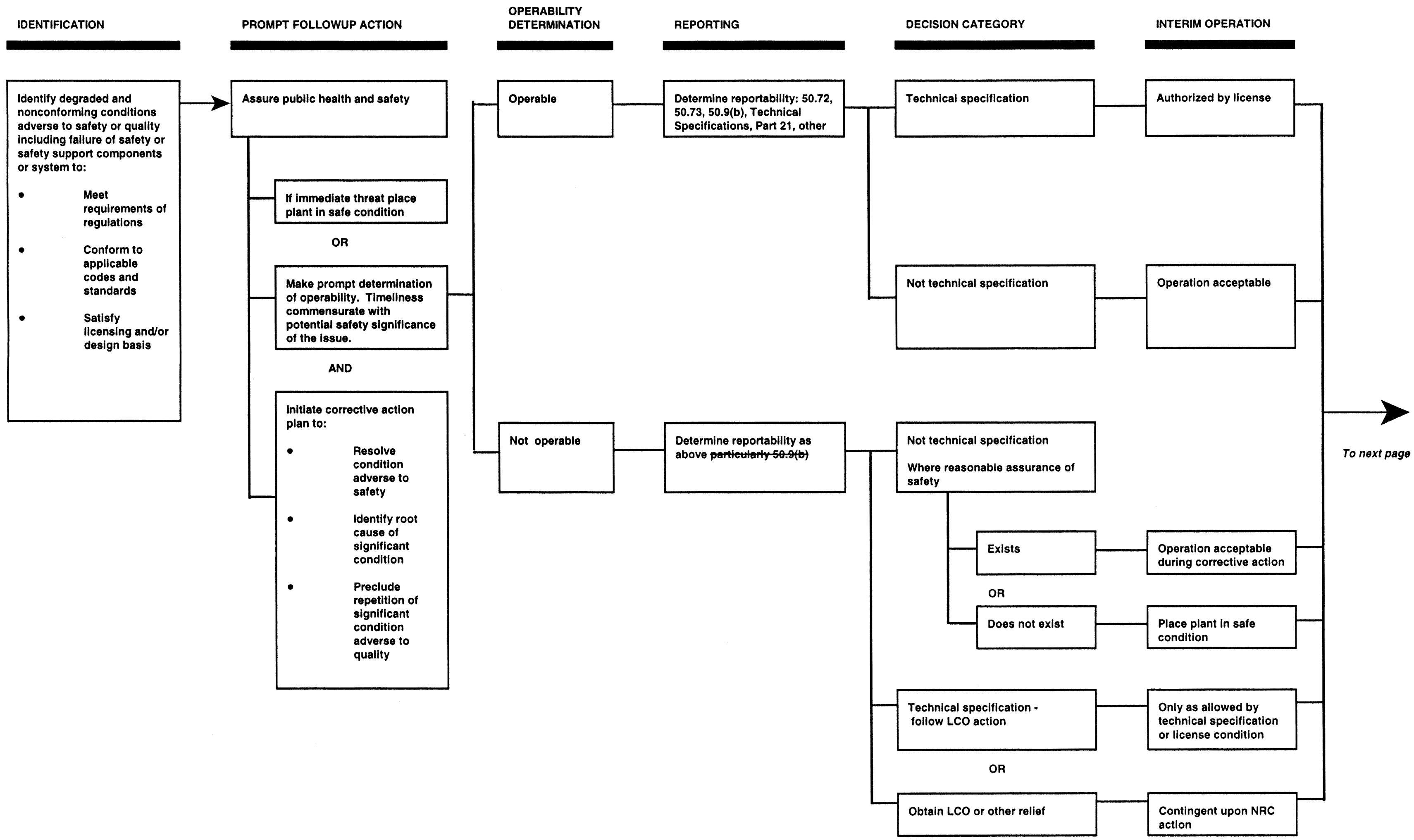
For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

BILLING CODE 7590–01–P

RESOLUTION OF DEGRADED AND NONCONFORMING CONDITIONS

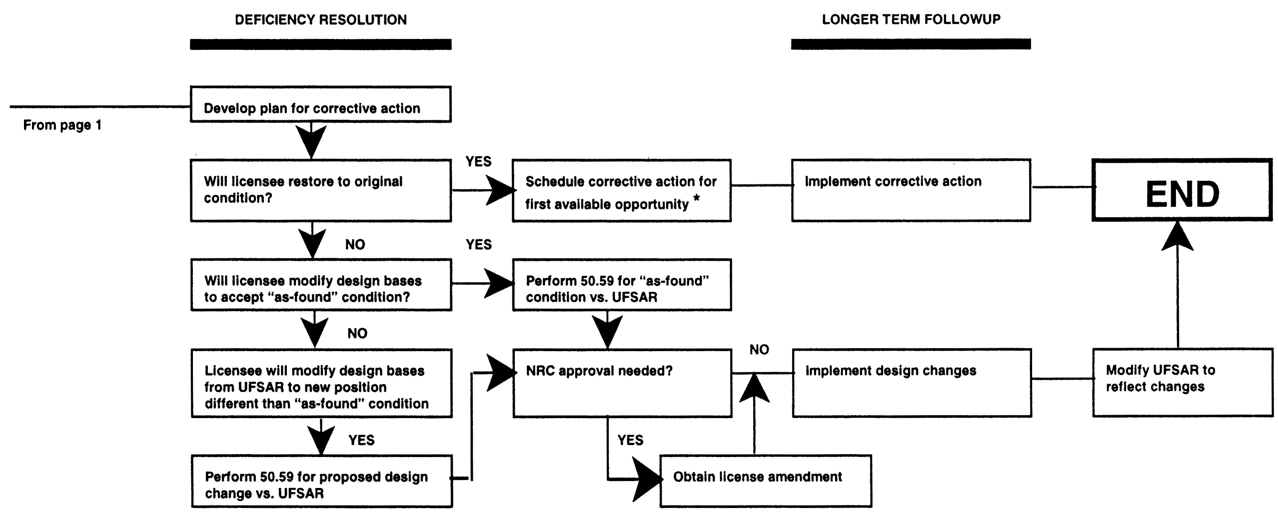


Notes:

- Generic communications may provide guidance specific to an issue but counter to the generally accepted approach herein. Examples of deviations from the above approach include NRC Generic Letter 88-07 on environmental qualification of electrical equipment and NRC Generic Letter 87-02 on seismic adequacy (see Section 4.6)
- For guidence on compensatory actions taken to maintain operability see Section 4.8

Attachment 2

RESOLUTION OF DEGRADED AND NONCONFORMING CONDITIONS
(continued)



* See Section 4.3

Attachment 2 (continued)

[FR Doc. 01–22867 Filed 9–12–01; 8:45 am]

BILLING CODE 7590–01–C

POSTAL RATE COMMISSION

Printing Plant Tour

AGENCY: Postal Rate Commission.

ACTION: Notice of commission visit.

SUMMARY: Postal Rate Commission members and staff will tour the Thurmont, MD facility of Moore's Communications on Tuesday, September 11, 2001. The tour will entail observation of mail preparation activities.

DATES: The tour is scheduled for Tuesday, September 11, 2001, at 11:30 a.m.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street NW., Washington, DC 20268–0001, 202–789–6820.

Dated: September 7, 2001.

Steven W. Williams,

Acting Secretary.

[FR Doc. 01–22961 Filed 9–10–01; 11:01 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27437]

Filing Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

September 7, 2001.

Notice is hereby given that the following filings(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 2, 2001, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 2, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Appalachian Power Company (70–5503)

Appalachian Power Company (''Appalachian''), 40 Franklin Road, S.W., Roanoke, Virginia 24011, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment to its application-declaration under sections 9(a), 10 and 12(d) of the Act and rules 44 and 54 under the Act.

By order dated December 10, 1974 (HCAR No. 18703) (''Order''), the Commission authorized Appalachian, among other things, to enter into an agreement of sale (''Agreement'') with the Industrial Development Authority of Russell County, Virginia (''Authority''), concerning the financing of pollution control facilities (''Facilities'') at Appalachian's Glen Lyn and Clinch River plants. Under the Agreement, the Authority may issue and sell its pollution control revenue bonds (''Revenue Bonds'') or pollution control refunding bonds (''Refunding Bonds'' and, together with Revenue Bonds, ''Bonds''), in one or more series, and deposit the proceeds with the trustee (''Trustee'') under an indenture (''Indenture'') entered into between the Authority and the Trustee. The Trustee applies the proceeds to the payment of the costs of construction of the Facilities or, in the case of proceeds from the sale of Refunding Bonds, to the payment of principal, premium (if any) and/or interest on Bonds to be refunded.

The Order also authorized Appalachian to convey an undivided interest in a portion of the Facilities to the Authority, and to reacquire that interest under an installment sales arrangement (''Sales Agreement'') requiring Appalachian to pay as the purchase price semi-annual installments in an amount that, together with other funds held by the Trustee under the Indenture for that purpose, will enable the Authority to pay, when due, the interest and principal on the Bonds. To date, the Authority has issued and sold eight series of Bonds in an aggregate principal amount of $116.24 million of which $37.0 million presently are outstanding.

The Authority now intends to issue and sell an additional series of bonds in the aggregate principal amount of up to $17.5 million (''Series I Refunding Bonds''), the proceeds of which will be used to provide for the redemption on or prior to maturity of $17.5 million principal amount of the Series G Bonds of the Authority. It is contemplated that the Series I Refunding Bonds will be issued and secured under a supplemental indenture between the Authority and the Trustee. Appalachian proposes to enter into an amended Sales Agreement in connection with the Series I Refunding Bonds under essentially the same terms and conditions of the original Sales Agreement. It is contemplated that the Series I Refunding Bonds will be sold under arrangements with a group of underwriters with such terms as shall be specified by Appalachian. The Series I Refunding Bonds shall have a state maturity of no more than forty years, a fixed rate of interest that shall not exceed 8% per annum or an initial rate of interest by any fluctuating rate Bonds that shall not exceed 8%. If it is deemed advisable, the Series I Refunding Bonds may be provided some form of credit enhancement, including, but not limited to, a letter of credit, bond insurance, standby purchase agreement or surety bond.

Appalachian Power Company (70–6171)

Appalachian Power Company (''Appalachian''), 40 Franklin Road, Roanoke, Virginia 24011, an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment under sections 9(a), 10 and 12(d) of the Act and rules 44 and 54 under the Act to its application-declaration previously filed under the Act.

By order dated June 30, 1978 (HCAR No. 20610) (''Order''), Appalachian was authorized to enter into an agreement of sale (''Agreement'') with Mason County, West Virginia (''County''). The Agreement provided for the construction, installation, financing and sale of certain pollution control facilities (''Facilities'') at Appalachian's Philip Sporn and Mountaineer Plants. Under the Agreement, the County may issue and sell its pollution control revenue bonds (''Revenue Bonds'') or pollution control refunding bonds (''Refunding Bonds''), in one or more series, and deposit the proceeds with the trustee (''Trustee'') under an indenture (''Indenture'') entered into between the County and the Trustee. The proceeds are applied by the Trustee to the payment of the costs of construction of the Facilities, or in the case of proceeds from the sale of Refunding Bonds, to the payment of the principal, premium (if any) and/or interest on Revenue Bonds to be refunded.

The Order also authorized Appalachian to convey an undivided interest in a portion of the Facilities to the County, and to reacquire that interest under an installment sales arrangement (''Sales Agreement'') requiring Appalachian to pay as the purchase price semi-annual installments in an amount that, together with other funds held by the Trustee under the Indenture for that purpose, will enable the County to pay, when due, the interest and principal on the Revenue Bonds. The County has issued and sold eight series of bonds in the aggregate principal amount of $350 million of which $130 million presently are outstanding.

It is now proposed that the County will issue and sell an additional series of Bonds in the aggregate principal amount of up to $10 million (''Series L Refunding Bonds'') the proceeds of which will be used to provide for the redemption on or prior to maturity of $10 million principal amount of the Series H Bonds of the County. Appalachian proposes to enter into an amended Sales Agreement in connection with the Series L Refunding Bonds under essentially the same terms and conditions of the original Sales Agreement.

It is contemplated that the Series L Refunding Bonds will be sold under arrangements with a group of underwriters with such terms as shall be specified by Appalachian. The Series L Refunding Bonds shall have a stated maturity of no more than forty years, a fixed rate of interest that shall not exceed 8% per annum or an initial rate of interest by any fluctuating rate Bonds that shall not exceed 8%. If it is deemed advisable, the Series L Refunding Bonds may be provided some form of credit enhancement, including, but not limited to, a letter of credit, bond insurance, standby purchase agreement or surety bond.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–22982 Filed 9–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44768; File No. SR–Amex–2001–36]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC Relating to Hearing Fees for Issuer Requests for Review of Initial Listing and Delisting Decisions

September 6, 2001.

On June 1, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, a proposed rule change relating to hearing fees for issuer requests for review of initial listing and delisting decisions. Specifically, the proposed rule change would amend Amex Rules 1010(c), 1203(a), and 1204(c) of the Amex Company Guide to impose hearing fees on issuers in connection with issuer requests for review of Exchange initial listing or delisting decisions.

The proposed rule change was published for comment in the **Federal Register** on August 1, 2001.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of Section 6 of the Act [5] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which requires, among other things, that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among issuers. The Commission believes that the fees are reasonable because they are designed to recoup the costs of processing requests for review and holding the subsequent proceedings.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–AMEX–2001–36) be, and it hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44589 (July 26, 2001), 66 FR 39806 (August 1, 2001).

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–22983 Filed 9–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44772; File No. SR–CBOE–2001–36]

Self-Regulatory Organizations; the Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 To Exempt Certain Spread Transactions From the Marketing Fee and To Amend the Definition of Deep-in-the-Money Options To Include a Spread Traded at Maximum Value

September 7, 2001.

On June 21, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to exempt certain spread transactions from its marketing fee and to amend the definition of deep-in-the-money options to include a spread traded at maximum value. The CBOE filed Amendment No. 1 to the proposed rule change on July 18, 2001.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on August 8, 2001.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [5] and, in particular, the requirements of Section 6 of the

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steve Youhn, Legal Department, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 17, 2001. The CBOE originally submitted the filing pursuant to Section 19(b)(3)(A) of the Act, but submitted the amended filing pursuant to Section 19(b)(2) of the Act.

[4] *See* Securities Exchange Act Release No. 44629 (July 31, 2001), 66 FR 41639.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Act [6] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act [7] because its is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [8], that the proposed rule change, as amended, (File No. SR–CBOE–2001–36) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–22984 Filed 9–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44769; File No. SR–NYSE–99–25]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to Proposed Rule Change Relating to Error Accounts, Floor Member Account Disclosure, and Erroneous Transaction Reports

September 6, 2001.

I. Introduction

On June 15, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to require that each member maintain an error account, and to require each member to report to the Exchange any securities account in which the member has a financial interest or over which the member has discretionary authority. The proposed rule change also includes provisions concerning error transaction procedures, recordkeeping, and other related matters. On December 13, 1999, the NYSE filed Amendment No. 1 to the proposed rule change with the Commission.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on February 10, 2000.[4] The Commission received no comments on the proposal.

On January 8, 2001, the NYSE filed Amendment No. 2 to the proposed rule change with the Commission. Amendment No. 2 added provisions to the proposed rule change to: (a) specify that no non-error trading may take place in a member's error account; (b) require a member to inform the NYSE anytime the member closes a securities account in which the member has an interest; and (c) provide a means for an error to be accepted, under certain conditions, where an order has been correctly executed, but the wrong price and/or the wrong size has been reported to the customer. Amendment No. 2 was published for comment in the **Federal Register** on July 14, 2001.[5] The Commission received no comments on Amendment No. 2.

On August 13, 2001, the NYSE filed Amendment No. 3 to the proposed rule change with the Commission. Amendment No. 3 would amend NYSE Rule 134 to require each member who initiates a transaction on the Floor of the Exchange to offset an error to create a time-stamped order ticket to evidence the transaction and to indicate that the transaction is to cover an error.

This order approves the proposed rule change as amended, accelerates approval of Amendment No. 3, and solicits comments from interested persons on that amendment.

II. Discussion

The Commission finds that the proposed rule change as amended is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [6] and, in particular, the requirements of section 6 of the Act [7] and the rules and regulations thereunder. The Commission finds specifically that the provisions of the proposed rule change contained in the original filing and the amendments are consistent with section 6(b)(5) of the Act [8] because they will enable the NYSE to more effectively monitor the activities of its members and investigate circumstances of suspected abuse.[9]

The Commission also notes that these provisions are likely to aid the NYSE in fulfilling some of the requirements of the undertakings included in the order issued by the Commission relating to the settlement of an enforcement action against the NYSE for failure to enforce compliance with section 11(a) [10] and Rule 11a–1 [11] under the Act and NYSE Rules 90, 95, and 111.[12]

The Commission finds that Amendment No. 3 is consistent with the Act because it will help provide a more complete and accurate record of errors that occur on the Floor and enhance the ability of the Exchange to examine a member's error account activities. The Commission finds good cause to approve Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of Amendment No. 3 in the **Federal Register**. The Commission believes that Amendment No. 3 will improve the overall effectiveness of the proposed rule change, while imposing no significant additional regulatory burden. Accelerated approval of the amendment will enable the Exchange to implement its several changes related to error transactions and erroneous reports at once.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 added further procedures and recordkeeping requirements to the proposed rule change, as well as a provision concerning the reporting of profitable errors.

[4] *See* Securities Exchange Act Release No. 42381 (February 3, 2000), 65 FR 6673.

[5] *See* Securities Exchange Act Release No. 44427 (June 21, 2001), 66 FR 33282.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] The Commission notes that the recordkeeping provision of the proposed rule change requires a member or member organization to maintain, besides the information specifically identified in the rule, ''such other information [with respect to errors] as the Exchange may from time to time require.'' To adopt any such additional requirement, the Exchange would need to file a rule change proposal with the Commission pursuant to the provisions of Rule 19b–4 under the Act.

[10] 15 U.S.C. 78k(a).

[11] 17 CFR 240.11a—1.

[12] *See* In the Matter of New York Stock Exchange, Inc., Securities Exchange Act Release No. 41574 (June 29, 1999); Administrative Proceeding File No. 3–9925.

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–99–25 and should be submitted by October 4, 2001.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–NYSE–99–25), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–22953 Filed 9–12–01; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3354]

Commonwealth of Virginia; Amendment #3

In accordance with a notice received from the Federal Emergency Management Agency, dated August 27, 2001, the above numbered declaration is hereby amended to establish the incident period as occurring on July 8, 2001 and continuing through August 27, 2001.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 10, 2001, and for loans for economic injury the deadline is April 12, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 31, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–22967 Filed 9–12–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3363]

Commonwealth of Kentucky

Scott County and the contiguous counties of Bourbon, Fayette, Franklin, Harrison, Grant, Owen and Woodford in the Commonwealth of Kentucky constitute a disaster area due to damages caused by severe thunderstorms that occurred on July 22, 2001, and continued through July 27, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 29, 2001 and for economic injury until the close of business on May 29, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elesewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 336311 and for economic injury the number assigned is 9M4600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 29, 2001.

Hector V. Barreto,

Administrator.

[FR Doc. 01–22968 Filed 9–12–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3347; State of Texas Amendment #5]

State of Texas

In accordance with a notice received from the Federal Emergency Management Agency, dated August 30, 2001, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to October 7, 2001.

All other information remains the same, *i.e.*, the deadline for filing applications for loans for economic injury is March 8, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 4, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–22964 Filed 9–12–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3354]

Commonwealth of Virginia (Amendment #4)

In accordance with a notice received from the Federal Emergency Management Agency, dated August 28, 2001, the above numbered Declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to October 10, 2001.

All other information remains the same, i.e., the deadline for filing applications for loans for economic injury is April 12, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 4, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–22966 Filed 9–12–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3345; Amendment #8]

State of West Virginia

In accordance with notices received from the Federal Emergency Management Agency, dated September 4 and September 5, 2001, the above numbered declaration is hereby amended to establish the incident period for this disaster as occurring May 15, 2001 and continuing through September 4, 2001. The above numbered declaration is also amended to extend the deadline for filing applications for physical damages as a result of this disaster to October 10, 2001.

All other information remains the same, i.e., the deadline for filing applications for loans for economic injury is March 4, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 6, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–22965 Filed 9–12–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3781]

Culturally Significant Objects Imported for Exhibition Determinations: ''Brazil: Body and Soul''

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Brazil: Body and Soul,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Solomon R. Guggenheim Museum, New York, NY from on or about October 11, 2001, to on or about January 27, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 30, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–23028 Filed 9–12–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3782]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Scream the Truth at the World: Emanuel Ringelblum and the Secret Archive of the Warsaw Ghetto''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Scream the Truth at the World: Emanuel Ringelblum and the Secret Archive of the Warsaw Ghetto,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Museum of Jewish Heritage, New York, NY from on or about November 6, 2001 to on or about February 10, 2002 and at possible additional venues yet to be determined is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 30, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–23029 Filed 9–12–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3768]

Bureau of Educational and Cultural Affairs; Request for Grant Proposals: NIS Community College Partnerships Program (NISCCPP)

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for the NIS Community College Partnerships Program. Accredited educational institutions offering the two-year Associate's degree and meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to pursue institutional or departmental objectives in partnership with foreign counterpart institutions with support from the NIS Community College Partnerships Program. These objectives should support the overall goals of the Program: to support the transition of the New Independent States to democratic systems based on market economies, and to strengthen mutual understanding and cooperation between the United States and the New Independent States on subjects of enduring common interest to the participating countries and institutions. The means for achieving these objectives may include teaching, scholarship, and outreach to professionals and other members of the communities served by the participating institutions.

Program Overview

The NIS Community College Partnerships Program supports institutional linkages in higher education with partners from the New Independent States of the former Soviet Union with funding available through the FREEDOM Support Act. The Bureau also anticipates issuing a separate and additional Request for Grant Proposals for the NIS College and University Partnerships Program which may include eligible fields and partner countries in addition to those listed in this RFGP. Eligible community colleges may apply for grants under either or both of these two competitions.

The Bureau also supports institutional linkages in higher education with partners worldwide through the Educational Partnerships Program (formerly College and University Affiliations Program); the Educational Partnerships Program Request for Grant Proposals was announced separately and has a deadline of January 11, 2002. Applicants interested in the Bureau's Educational Partnerships Program should contact the Bureau's Humphrey

Fellowships and Institutional Linkages Branch at (202) 619–5289. Other RFGPs for educational partnerships may also be published in Fiscal Year 2002.

Program Objectives and Eligible Fields

This RFGP for the NIS Community College Partnerships Program does not prescribe specific project objectives, but establishes the parameters within which applicants are invited to propose projects. Institutional objectives should be consistent with the Program's goals of supporting the transition of the New Independent States to democratic systems based on market economies and of equipping the participating institutions with a stronger ability to address, through teaching, research, or outreach, critical issues in the fields eligible in FY 2002:

Business, accounting and trade; Journalism and media studies; and education, continuing education, and educational administration.

Institutional Objectives for Applicants

While the benefits of the project to each of the participating institutions may differ significantly in nature and scope based on their respective needs and resource bases, proposals should outline well-reasoned strategies that are designed to meet specific objectives for each participating U.S. and foreign department or institution as a whole.

For example, proposals may outline the parameters and possible content of new courses, new research or teaching specializations or methodologies, new or revised curricula, new programs for educational outreach, or other changes specifically anticipated as a result of the project. Proposals to pursue a limited number of related thematic objectives at each institution are preferred to proposals addressing a large number of unrelated objectives. Proposals that do not benefit all institutional partners are not eligible for funding from this Program. Proposals should focus clearly on strategies to promote curriculum, faculty, and staff development, as well as administrative reform, at the NIS partner institution(s) in one or more of the eligible disciplines. Projects may result in the development of a new academic program or the restructuring of an existing program, and should equip institutions of higher education to contribute to the transitions in the New Independent States to market economies and open democratic systems. Plans to enable participants to extend the benefits of the project to larger audiences through outreach to government, NGO, and business representatives are especially encouraged.

In addition to demonstrating how each participating institution can assist its partner(s) to meet institutional goals, proposals should also explain how this cooperation will enable each institution to address its own needs. Accordingly, applicants are encouraged to describe the needs and deficiencies as well as the capabilities and strengths of each participating department and institution, and how each institution will contribute to and benefit from the achievement of project objectives. Proposals that realistically assess institutional capacities will be better able to outline compelling objectives that address institutional needs and justify a request for support. To be competitive, proposals should demonstrate that the participating institutions understand one another and are committed to mutual support and cooperation in project implementation.

If the proposed partnership would occur within the context of a previous or ongoing project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement previous and concurrent projects. Previous projects should be described, with details about the amounts and sources of support and the results of previous cooperative efforts.

Institutions receiving partnership grant awards will be expected to submit periodic reports on the results of program activities. Proposals should outline and budget for a methodology for project evaluation. The evaluation plan should include an assessment of the current status of each participating department's and institution's needs at the time of program inception with specific reference to project objectives; formative evaluation to allow for mid-course revisions in the implementation strategy; and, at the conclusion of the project, summative evaluation of the degree to which the project's objectives have been achieved together with observations about the project's continuing potential to influence the participating institutions and their surrounding communities or societies. The final evaluation should also include recommendations about how to build upon project achievements. Evaluative observations by external consultants with appropriate subject and regional expertise are especially encouraged.

Budget Guidelines

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

The commitment of all partner institutions to the proposed project should be reflected in the cost-sharing which they offer in the context of their respective institutional capacities. Although the contributions offered by U.S. and foreign institutions with relatively few resources may be less than those offered by applicants with greater resources, all participating institutions should identify appropriate cost-sharing. These costs may include estimated in-kind contributions. Consistent with the review criteria listed elsewhere in this RFGP and with specific reference to cost-sharing and institutional commitment to cooperation, proposed cost-sharing will be considered an important indicator of each participating institution's interest in the project and potential to benefit from it.

A U.S. college must submit the proposal and must be prepared to serve as grant recipient with responsibility for project coordination. Proposals must include letters of commitment from all institutional partners. Each letter must be signed by an official who is authorized to commit institutional resources to the project.

The Bureau's support may be used to assist with the costs of the exchange visits as well as the costs (up to a maximum of 25 percent of the total grant) of the administration of the project at any partner institution. However, governmental institutions except universities may not charge administrative costs to the grant. Administrative costs include administrative salaries and direct administrative costs such as rent, telephones, and postage. Indirect costs are not eligible for Bureau support under this competition. Although each grant will be awarded to a single U.S. institutional partner, adequate provision in the proposal for the administrative costs of the project at all non-governmental partner institutions, including the foreign partner(s), is encouraged. More information on partner institution eligibility in this competition is found in this RFGP under the headings "U.S. Partner and Participant Eligibility" and "Foreign Partner and Participant Eligibility."

Salary support for administrative activity may be included within the 25 percent maximum.

The proposal may include a request for funding to reinforce the activities of exchange participants through the establishment and maintenance of Internet and/or electronic mail facilities as well as through interactive technology or non-technology-based distance-learning programs. However, the establishment and maintenance of these facilities at governmental organizations in the U.S. or at foreign governmental organizations other than universities is not eligible for funding. Projects focusing primarily on technology or physical infrastructure development are not encouraged, and the amount that may be requested for educational and technical materials should not exceed 25 percent of the Bureau's funding for the project. Proposals that include Internet, electronic mail, and other interactive technologies in countries where these technologies are not easily maintained or financed should discuss how the foreign partner institution will cover their costs after the project ends. Applicants may propose other project activities not specifically mentioned in this solicitation if the activities reinforce the impact of the project.

The maximum award in the FY 2002 competition will be $200,000. The program awards grants for approximately three years. Awards may be extended on a no-cost basis beyond the initial grant period by mutual agreement if progress toward project goals is satisfactory. Requests for amounts smaller than the maximum are eligible. Budgets and budget notes should carefully justify the amounts requested. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Grants are subject to the availability of funds for FY 2002. The amount of funding available for proposals to the NIS Community College Partnerships Program in FY 2002 has not yet been determined. In FY 2001, ten proposals were received under this competition. Of this number, approximately two proposals are anticipated to be funded.

U.S. Institution And Participant Eligibility

The lead institution and grant recipient in the project must be an accredited U.S. community college. The lead U.S. organization in a consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners. Secondary U.S. partners may include governmental or non-governmental organizations as well as non-profit service and professional organizations.

With the exception of translators and outside consultants reporting on the status of project objectives, participation is limited to teachers, staff, and administrators from the participating U.S. institution(s). All participants who are funded by the Bureau under the program budget and represent the U.S. institution must be U.S. citizens.

Foreign Institution and Participant Eligibility

In other countries, participation as a primary partner is open to recognized degree granting institutions of post-secondary education. Applicants are encouraged to identify partners which share community colleges' mission of serving the local community. Secondary partners may include independent research institutes, relevant governmental organizations, and private non-profit organizations with project-related educational objectives. Except for translators and outside consultants reporting on the status of project objectives, participation is limited to teachers, administrators, researchers, or advanced students from the participating foreign institution(s). Any advanced student participant must either have teaching responsibilities or be preparing for such responsibilities. Foreign participants must be citizens, nationals, or permanent residents of the country of the foreign partner, and must be both qualified to receive U.S. J–1 visas and willing to travel to the U.S. under the provisions of a J–1 visa during the exchange visits funded by this Program. If participants are not identified in the proposal, the proposal narrative should outline the procedure through which individuals will be selected to participate in exchange activities. The U.S. partner should participate actively in the selection of foreign participants whether they are identified in the proposal or selected during the course of project implementation. All participants should be selected because of their demonstrable qualifications to contribute to overall project goals.

Foreign Country And Location Eligibility

Foreign partners from the following countries are eligible:

Armenia;
Moldova;
Ukraine;
Uzbekistan.

Partnerships including a secondary foreign partner from a non-NIS country are eligible; however, with the exception noted below under the heading "Central European Partners", the Bureau will not cover overseas non-NIS partner institution costs.

Central European Partners

The Bureau encourages proposals which build upon established collaboration between U.S. institutions and their partners in Central and Eastern Europe in order to support faculty and curriculum development in the NIS and to promote regional cooperation. Funds may be budgeted for the exchange of faculty between NIS institutions and institutions of higher learning in Central and Eastern Europe (applicants planning to submit proposals for trilateral partnerships with a partner from Central and Eastern Europe are encouraged to contact the program office).

Ineligibility

A proposal may be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established in this document and in the Solicitation Package;
(2) It is not received by the deadline;
(3) It is not submitted by the U.S. partner;
(4) One of the partner institutions is ineligible;
(5) The foreign country or geographic location is ineligible;
(6) The amount requested from the Bureau exceeds $200,000.

Grant-Making Authority

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act).

Projects must conform with the Bureau's requirements and guidelines outlined in the solicitation package for this RFGP. The Project Objectives, Goals, and Implementation (hereafter, POGI) and the Proposal Submission

Instructions (hereafter, PSI), which contain additional guidelines, are included in the Solicitation Package. Proposals that do not follow RFGP requirements and the guidelines appearing in the POGI and PSI may be excluded from consideration due to technical ineligibility.

Announcement Title and Number

All communications with the Bureau concerning this announcement should refer to the NIS Community College Partnerships Program and reference number ECA/A/S/U–02–08.

Deadline for Proposals

All copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, January 25, 2002. Faxed documents will not be accepted (although faxed letters of commitment from non-U.S. institutional partners may be submitted as part of the original proposal), nor will documents postmarked on Friday, January 25, 2002 but received on a later date.

Approximate Grant Duration

Grants should begin on or about September 1, 2002 and last approximately three years. Please note that this date represents the approximate date that successful applicants will be informed. The program office understands that due to the short notice, it may not be feasible to schedule activities beyond brief planning visits during the first semester.

For Further Information

To request a solicitation package, contact the Humphrey Fellowships and Institutional Linkages Branch (NIS Community College Partnerships Program); Office of Global Educational Programs; Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349; U.S. Department of State; SA–44, 301 Fourth Street, SW.; Washington, DC 20547; phone: (202) 619–5289, fax: (202) 401–1433. The solicitation package includes more detailed award criteria, all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Applicants desiring more information may contact one of the following program officers: Jonathan Cebra (telephone: (202) 205–8379, e-mail: jcebra@pd.state.gov) on all inquiries and correspondence regarding partnerships with institutions in Ukraine and Moldova; Alanna Bailey (telephone: (202) 205–8266, e-mail: abailey@pd.state.gov) on all inquiries and correspondence regarding partnerships with institutions in Uzbekistan or Armenia.

To Download a Solicitation Package via Internet

The entire Solicitation Package, consisting of the RFGP, POGI, and PSI, may be downloaded from the Bureau's website at: *http://exchanges.state.gov/education/rfgps.* Please read all information before downloading.

Prospective applicants should read the complete Request for Grant Proposals as published in the **Federal Register** and available on the Bureau's website before addressing inquiries to the NIS Community College Partnerships Program staff or submitting their proposals. Once the RFGP deadline has passed, Department staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the complete application should be sent by the project's lead U.S. college to:

U.S. Department of State
SA–44
Bureau of Educational and Cultural Affairs
Ref: ECA/A/S/U–02–08
Program Management, ECA/EX/PM, Room 534
301 4th Street, SW.
Washington, DC 20547

Applicants must also submit the "Proposal Title Sheet," "Executive Summary," "Proposal Narrative" and "Calendar of Activities" sections of the proposal as e-mail attachments in Microsoft Word (preferred) or as ASCII text files to the following e-mail address: *partnerships@pd.state.gov.* In the e-mail message subject line, include the following: ECA/A/S/U–02–08 and the country or countries of the foreign partner(s) together with the names of the U.S. and foreign partner institutions. To reduce the time needed to obtain advisory comments from the Public Affairs Sections of U.S. Embassies overseas the Bureau will transmit these files electronically to these offices.

Diversity, Freedom And Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support of Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals may be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be evaluated by independent external reviewers. These reviewers, who will be professional, scholarly, or educational experts with appropriate regional and thematic knowledge, will provide recommendations and assessments for consideration by the Bureau. The Bureau will consider for funding only those proposals which are recommended for funding by the independent external reviewers.

Proposals may also be reviewed by the Office of the Legal Advisor or by other offices of the U.S. Department of State. In addition, U.S. Embassy officers may provide advisory comment. Funding decisions will be made at the discretion of the Department of State's Acting Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) will reside with the Bureau's grants officer.

Review Criteria

All reviewers will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be reviewed competitively according to these criteria, which are not rank-ordered or weighted.

(1) *Broad and Enduring Significance of Institutional Objectives:* Project objectives should have significant and ongoing results for the participating institutions and for their surrounding societies or communities by providing a deepened understanding of critical issues in one or more of the eligible fields. Project objectives should relate clearly to institutional and societal needs, including the transition of the New Independent States to democratic systems based on market economies.

(2) *Creativity and Feasibility of Strategy to Achieve Project Objectives:* Strategies to achieve project objectives should be feasible and realistic within the projected budget and timeframe. These strategies should utilize and reinforce exchange activities creatively to ensure an efficient use of program resources.

(3) *Institutional Commitment to Cooperation:* Proposals should demonstrate significant understanding by each institution of its own needs and capacities and of the needs and capacities of its proposed partner(s), together with a strong commitment by the partner institutions, during and after the period of grant activity, to cooperate with one another in the mutual pursuit of institutional objectives.

(4) *Project Evaluation:* Proposals should outline a methodology for determining the degree to which a project meets its objectives, both while the project is underway and at its conclusion. The final project evaluation should include an external component and should provide observations about the project's influence within the participating institutions as well as their surrounding communities or societies.

(5) *Cost-effectiveness:* Administrative and program costs should be reasonable and appropriate with cost-sharing provided by all participating institutions within the context of their respective capacities. We view cost-sharing as a reflection of institutional commitment to the project. Although indirect costs are eligible for inclusion as cost-sharing by the applicant, contributions should not be limited to indirect costs.

(6) *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity are included in project objectives for all institutional partners. Issues resulting from differences of race, ethnicity, gender, religion, geography, socio-economic status, or physical challenge should be addressed during project implementation. In addition, project participants and administrators should reflect the diversity within the societies which they represent (see the section of this document on ''Diversity, Freedom, and Democracy Guidelines''). Proposals should also discuss how the various institutional partners approach diversity issues in their respective communities or societies.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any State Department representative. Explanatory information provided by the Department of State that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: August 30, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural, Affairs, Department of State.

[FR Doc. 01–22765 Filed 9–12–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3769]

Bureau of Educational and Cultural Affairs; Request for Grant Proposals: NIS College and University Partnerships Program (NISCUPP)

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for the NIS College and University Partnerships Program. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to pursue institutional or departmental objectives in partnership with foreign counterpart institutions with support from the NIS College and University Partnerships Program. These objectives should support the overall goals of the Program: to support the transition of the New Independent States to democratic systems based on market economies, and to strengthen mutual understanding and cooperation between the United States and the New Independent States on subjects of enduring common interest to the participating countries and institutions. The means for achieving these objectives may include teaching, scholarship, and outreach to professionals and other members of the communities served by the participating institutions.

Program Overview

The NIS College and University Partnerships Program supports institutional linkages in higher education with partners from the New Independent States of the former Soviet Union with funding available through the FREEDOM Support Act. The Bureau also anticipates issuing a separate and additional Request for Grant Proposals for a partnership program for community colleges interested in cooperating with institutions in some or all of the New Independent States. Eligible community colleges may apply for grants under either or both of these two competitions.

The Bureau also supports institutional linkages in higher education with partners worldwide through the Educational Partnerships Program (formerly College and University Affiliations Program); the Educational Partnerships Program Request for Grant Proposals was announced separately and has a deadline of January 11, 2002. Applicants interested in the Bureau's Educational Partnerships Program should contact the Bureau's Humphrey Fellowships and Institutional Linkages Branch at (202)619–5289. Other RFGPs for educational partnerships may also be published in Fiscal Year 2002.

Program Objectives and Eligible Fields

This RFGP for the NIS College and University Partnerships Program does not prescribe specific project objectives, but establishes the parameters within which applicants are invited to propose projects. Institutional objectives should be consistent with the program's goals of supporting the transition of the New Independent States to democratic systems based on market economies and of equipping the participating institutions with a stronger ability to address, through teaching, research, or outreach, critical issues in the fields eligible in FY 2002:

The social, political, and economic sciences;

Business, accounting and trade;

Journalism and media studies;

Law;

Public administration and public policy analysis; and education, continuing education, and educational administration.

Institutional Objectives for Applicants

While the benefits of the project to each of the participating institutions may differ significantly in nature and scope based on their respective needs and resource bases, proposals should outline well-reasoned strategies that are designed to meet specific objectives for each participating U.S. and foreign department or institution as a whole.

For example, proposals may outline the parameters and possible content of new courses, new research or teaching specializations or methodologies, new or revised curricula, new programs for educational outreach, or other changes specifically anticipated as a result of the project. Proposals to pursue a limited number of related thematic objectives at each institution are preferred to proposals addressing a large number of unrelated objectives. Proposals that do not benefit all institutional partners are not eligible for funding from this Program. Proposals should focus clearly on strategies to promote curriculum, faculty, and staff development, as well as administrative reform, at the NIS partner institution(s) in one or more of the eligible disciplines. Projects may result in the development of a new academic program or the restructuring of an existing program, and should equip institutions of higher education to contribute to the transitions in the New Independent States to market economies and open democratic systems. Plans to enable participants to extend the benefits of the project to larger audiences through outreach to government, NGO, and business representatives are especially encouraged.

In addition to demonstrating how each participating institution can assist its partner(s) to meet institutional goals, proposals should also explain how this cooperation will enable each institution to address its own needs. Accordingly, applicants are encouraged to describe the needs and deficiencies as well as the capabilities and strengths of each participating department and institution, and how each institution will contribute to and benefit from the achievement of project objectives. Proposals that realistically assess institutional capacities will be better able to outline compelling objectives that address institutional needs and justify a request for support. To be competitive, proposals should demonstrate that the participating institutions understand one another and are committed to mutual support and cooperation in project implementation.

If the proposed partnership would occur within the context of a previous or ongoing project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement previous and concurrent projects. Previous projects should be described, with details about the amounts and sources of support and the results of previous cooperative efforts.

Institutions receiving partnership grant awards will be expected to submit periodic reports on the results of program activities. Proposals should outline and budget for a methodology for project evaluation. The evaluation plan should include an assessment of the current status of each participating department's and institution's needs at the time of program inception with specific reference to project objectives; formative evaluation to allow for mid-course revisions in the implementation strategy; and, at the conclusion of the project, summative evaluation of the degree to which the project's objectives have been achieved together with observations about the project's continuing potential to influence the participating institutions and their surrounding communities or societies. The final evaluation should also include recommendations about how to build upon project achievements. Evaluative observations by external consultants with appropriate subject and regional expertise are especially encouraged.

Budget Guidelines

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

The commitment of all partner institutions to the proposed project should be reflected in the cost-sharing which they offer in the context of their respective institutional capacities. Although the contributions offered by U.S. and foreign institutions with relatively few resources may be less than those offered by applicants with greater resources, all participating institutions should identify appropriate cost-sharing. These costs may include estimated in-kind contributions. Consistent with the review criteria listed elsewhere in this RFGP and with specific reference to cost-sharing and institutional commitment to cooperation, proposed cost-sharing will be considered an important indicator of each participating institution's interest in the project and potential to benefit from it.

A U.S. college or university must submit the proposal and must be prepared to serve as grant recipient with responsibility for project coordination. Proposals must include letters of commitment from all institutional partners. Each letter must be signed by an official who is authorized to commit institutional resources to the project.

The Bureau's support may be used to assist with the costs of the exchange visits as well as the costs (up to a maximum of 25 percent of the total grant) of the administration of the project at any partner institution. However, governmental institutions except universities may not charge administrative costs to the grant. Administrative costs include administrative salaries and direct administrative costs such as rent, telephones, and postage. Indirect costs are not eligible for Bureau support under this competition. Although each grant will be awarded to a single U.S. institutional partner, adequate provision in the proposal for the administrative costs of the project at all non-governmental partner institutions, including the foreign partner(s), is encouraged. More information on partner institution eligibility in this competition is found in this RFGP under the headings ''U.S. Partner and Participant Eligibility'' and ''Foreign Partner and Participant Eligibility.''

Salary support for administrative activity may be included within the 25 percent maximum. Fees for translation services and for outside consultants reporting on the status of project objectives are allowable as program expenses.

The proposal may include a request for funding to reinforce the activities of exchange participants through the establishment and maintenance of Internet and/or electronic mail facilities as well as through interactive technology or non-technology-based distance-learning programs. However, the establishment and maintenance of these facilities at governmental organizations in the U.S. or at foreign governmental organizations other than universities is not eligible for funding. Projects focusing primarily on technology or physical infrastructure development are not encouraged, and the amount that may be requested for educational and technical materials should not exceed 25 percent of the Bureau's funding for the project. Proposals that include Internet, electronic mail, and other interactive technologies in countries where these technologies are not easily maintained or financed should discuss how the foreign partner institution will cover their costs after the project ends. Applicants may propose other project activities not specifically mentioned in this solicitation if the activities reinforce the impact of the project.

The maximum award in the FY 2002 competition will be $300,000. The program awards grants for approximately three years. Awards may be extended on a no-cost basis beyond the initial grant period by mutual agreement if progress toward project goals is satisfactory. Requests for amounts smaller than the maximum are eligible. Budgets and budget notes should carefully justify the amounts requested. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Grants are subject to the availability of funds for FY 2002. The amount of funding available for proposals to the NIS College and University Partnerships Program in FY 2002 has not yet been determined. In FY 2001, 77 proposals were received under this competition. Of this number, 18 proposals are anticipated to be funded.

U.S. Institution and Participant Eligibility

The lead institution and grant recipient in the project must be an accredited U.S. college or university.

Applications from community colleges, minority-serving institutions, undergraduate liberal arts colleges, comprehensive universities, research universities, and combinations of these types of institutions are eligible. The lead U.S. organization in a consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners. Secondary U.S. partners may include governmental or non-governmental organizations as well as non-profit service and professional organizations.

With the exception of translators and outside consultants reporting on the status of project objectives, participation is limited to teachers, advanced graduate students, staff, and administrators from the participating U.S. institution(s). All participants who are funded by the Bureau under the program budget and represent the U.S. institution must be U.S. citizens. Advanced graduate students at the U.S. institution(s) are eligible for support from the project only as visiting instructors or researchers at a foreign partner institution.

Foreign Institution and Participant Eligibility

In other countries, participation as a primary partner is open to recognized degree granting institutions of post-secondary education. Secondary partners may include independent research institutes, relevant governmental organizations, and private non-profit organizations with project-related educational objectives. Except for translators and outside consultants reporting on the status of project objectives, participation is limited to teachers, administrators, researchers, or advanced students from the participating foreign institution(s). Any advanced student participant must either have teaching responsibilities or be preparing for such responsibilities. Foreign participants must be citizens, nationals, or permanent residents of the country of the foreign partner, and must be both qualified to receive U.S. J–1 visas and willing to travel to the U.S. under the provisions of a J–1 visa during the exchange visits funded by this Program. If participants are not identified in the proposal, the proposal narrative should outline the procedure through which individuals will be selected to participate in exchange activities. The U.S. partner should participate actively in the selection of foreign participants whether they are identified in the proposal or selected during the course of project implementation. All participants should be selected because of their demonstrable qualifications to contribute to overall project goals.

Foreign Country and Location Eligibility

Foreign partners from the following countries are eligible:

Armenia;

Azerbaijan;

Belarus—potential applicants for partnerships with institutions in Belarus are encouraged to contact the program office;

Georgia;

Kazakhstan—partnerships that include a partner in Almaty or Astana as well as a partner in another region of Kazakhstan are encouraged;

Kyrgyzstan;

Moldova;

Russia—proposals for partnerships with institutions located in Moscow or St. Petersburg should clearly indicate how those partnerships will have an impact on other regions. Proposals which designate a partner institution in the Russian Far East are encouraged.

Tajikistan—in consideration of the State Department Warning advising U.S. citizens to defer travel to Tajikistan, proposals should not include travel to Tajikistan by U.S. participants;

Ukraine—proposals which designate partner institutions outside Kiev are encouraged; Uzbekistan.

Partnerships including a secondary foreign partner from a non-NIS country are eligible; however, with the exception noted below under the heading ''Central European Partners,'' the Bureau will not cover overseas non-NIS partner institution costs.

Central European Partners

The Bureau encourages proposals which build upon established collaboration between U.S. institutions and their partners in Central and Eastern Europe in order to support faculty and curriculum development in the NIS and to promote regional cooperation. Funds may be budgeted for the exchange of faculty between NIS institutions and institutions of higher learning in Central and Eastern Europe (applicants planning to submit proposals for trilateral partnerships with a partner from Central and Eastern Europe are encouraged to contact the program office).

Ineligibility

A proposal may be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established in this document and in the Solicitation Package;

(2) It is not received by the deadline;

(3) It is not submitted by the U.S. partner;

(4) One of the partner institutions is ineligible;

(5) The foreign country or geographic location is ineligible;

(6) The amount requested from the Bureau exceeds $300,000.

Grant-Making Authority

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act).

Projects must conform with the Bureau's requirements and guidelines outlined in the solicitation package for this RFGP. The Project Objectives, Goals, and Implementation (hereafter, POGI) and the Proposal Submission Instructions (hereafter, PSI), which contain additional guidelines, are included in the Solicitation Package. Proposals that do not follow RFGP requirements and the guidelines appearing in the POGI and PSI may be excluded from consideration due to technical ineligibility.

Announcement Title and Number

All communications with the Bureau concerning this announcement should refer to the NIS College and University Partnerships Program and reference number ECA/A/S/U–02–07.

Deadline for Proposals

All copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, January 18, 2002. Faxed documents will not be accepted (although faxed letters of commitment from non-U.S. institutional partners may be submitted as part of the original proposal), nor will documents postmarked on Friday, January 18, 2002 but received on a later date.

Approximate Grant Duration

Grants should begin on or about September 1, 2002 and last approximately three years. Please note that this date represents the approximate date that successful applicants will be informed. The program office understands that due to the short notice, it may not be feasible to schedule activities beyond brief planning visits during the first semester.

For Further Information

To request a solicitation package, contact the Humphrey Fellowships and Institutional Linkages Branch (NIS College and University Partnerships Program); Office of Global Educational Programs; Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349; U.S. Department of State; SA-44, 301 Fourth Street, SW.; Washington, DC 20547; phone: (202) 619–5289, fax: (202) 401–1433. The solicitation package includes more detailed award criteria, all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Applicants desiring more information may contact one of the following NIS College and University Partnerships regional program officers: Michelle Johnson (telephone: (202) 205–8434 or 619–4097, e-mail: *johnsonmi@pd.state.gov*) on all inquiries and correspondence regarding partnerships with institutions in Russia; Jonathan Cebra (telephone: (202) 205–8379 or 619–4126, e-mail: *jcebra@pd.state.gov*) on all inquiries and correspondence regarding partnerships with institutions in Ukraine, Belarus, and Moldova; Alanna Bailey (telephone: (202) 205–8266 or 619–6492, e-mail: *abailey@pd.state.gov*) on all inquiries and correspondence regarding partnerships with institutions in any other eligible country (in the Central Asia or Caucasus regions).

To Download a Solicitation Package Via Internet

The entire Solicitation Package, consisting of the RFGP, POGI, and PSI, may be downloaded from the Bureau's website at: *http://exchanges.state.gov/education/rfgps*. Please read all information before downloading.

Prospective applicants should read the complete Request for Grant Proposals as published in the **Federal Register** and available on the Bureau's website before addressing inquiries to the NIS College and University Partnerships Program staff or submitting their proposals. Once the RFGP deadline has passed, Department staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the complete application should be sent by the project's lead U.S. college or university to:

U.S. Department of State
SA–44
Bureau of Educational and Cultural Affairs
Ref: ECA/A/S/U–02–07
Program Management, ECA/EX/PM, Room 534
301 4th Street, SW
Washington, DC 20547

Applicants must also submit the ''Proposal Title Sheet,''

''Executive Summary,'' ''Proposal Narrative'' and ''Calendar of Activities'' sections of the proposal as e-mail attachments in Microsoft Word (preferred) or as ASCII text files to the following e-mail address: *partnerships@pd.state.gov*. In the e-mail message subject line, include the following: ECA/A/S/U–02–07 and the country or countries of the foreign partner(s) together with the names of the U.S. and foreign partner institutions. To reduce the time needed to obtain advisory comments from the Public Affairs Sections of U.S. Embassies overseas the Bureau will transmit these files electronically to these offices.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support of Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals may be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be evaluated by independent external reviewers. These reviewers, who will be professional, scholarly, or educational experts with appropriate regional and thematic knowledge, will provide recommendations and assessments for consideration by the Bureau. The Bureau will consider for funding only those proposals which are recommended for funding by the independent external reviewers.

Proposals may also be reviewed by the Office of the Legal Advisor or by other offices of the U.S. Department of State. In addition, U.S. Embassy officers may provide advisory comment. Funding decisions will be made at the discretion of the Department of State's Acting Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) will reside with the Bureau's grants officer.

Review Criteria

All reviewers will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be reviewed competitively according to these criteria, which are not rank-ordered or weighted.

(1) *Broad and Enduring Significance of Institutional Objectives:* Project objectives should have significant and ongoing results for the participating institutions and for their surrounding societies or communities by providing a deepened understanding of critical issues in one or more of the eligible fields. Project objectives should relate clearly to institutional and societal needs, including the transition of the New Independent States to democratic systems based on market economies.

(2) *Creativity and Feasibility of Strategy to Achieve Project Objectives:* Strategies to achieve project objectives should be feasible and realistic within the projected budget and timeframe. These strategies should utilize and reinforce exchange activities creatively to ensure an efficient use of program resources.

(3) *Institutional Commitment to Cooperation:* Proposals should demonstrate significant understanding by each institution of its own needs and capacities and of the needs and capacities of its proposed partner(s), together with a strong commitment by the partner institutions, during and after the period of grant activity, to cooperate with one another in the mutual pursuit of institutional objectives.

(4) *Project Evaluation:* Proposals should outline a methodology for determining the degree to which a project meets its objectives, both while the project is underway and at its conclusion. The final project evaluation should include an external component and should provide observations about the project's influence within the participating institutions as well as their surrounding communities or societies.

(5) *Cost-effectiveness:* Administrative and program costs should be reasonable and appropriate with cost-sharing provided by all participating institutions within the context of their respective capacities. We view cost-sharing as a reflection of institutional commitment to the project. Although indirect costs are eligible for inclusion as cost-sharing by the applicant, contributions should not be limited to indirect costs.

(6) *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity are included in project objectives for all institutional partners. Issues resulting from differences of race, ethnicity, gender, religion, geography, socio-economic status, or physical challenge should be addressed during project implementation. In addition, project participants and administrators should reflect the diversity within the societies which they represent (see the section of this document on ''Diversity, Freedom, and Democracy Guidelines''). Proposals should also discuss how the various institutional partners approach diversity issues in their respective communities or societies.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any State Department representative. Explanatory information provided by the Department of State that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: August 31, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–22766 Filed 9–12–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Biz Jet Services, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 2001–9–4) Dockets OST–01–9880 and OST–01–9881.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Biz Jet Services, Inc., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than September 24, 2001.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–01–9880 and OST–01–9881 and addressed to the Department of Transportation Dockets (SVC–124.1, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

Dated: September 7, 2001.

Robert S. Goldner,

Special Assistant for Aviation and International Affairs.

[FR Doc. 01–23032 Filed 9–12–01; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Thursday, October 18, 2001, from 8:00 a.m. to 1:00 p.m. at the Federal Aviation Administration Headquarters Building, 800 Independence Avenue SW, Washington, DC, in the Bessie Coleman Conference Center (second floor). This will be the thirty-fourth meeting of the COMSTAC.

The agenda for the meeting will include a legislative update on Congressional activities involving commercial space transportation; an activities report from FAA's Associate Administrator for Commercial Space Transportation (formerly the Office of Commercial Space Transportation [60 FR 62762, December 7, 1995]); and a status report on the FAA Notice of Proposed Rulemaking on Licensing and Safety Requirements for Launch.

Meetings of the Technology and Innovation, Reusable Launch Vehicle, Risk Management, and Launch Operations and Support Working Groups will be held on Wednesday, October 17, 2001. For specific information concerning the times and locations of these meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST–200), Office of the Associate Administrator for Commercial Space Transportation (AST), 800 Independence Avenue SW, Room 331, Washington, DC 20591, telephone (202) 385–4713; E-mail brenda.parker@faa.dot.gov.

Issued in Washington, DC, September 4, 2001.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 01–23035 Filed 9–12–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Chatham County, NC

AGENCY: Federal Highway Administration (FHWA), Department of Transporation (DOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Chatham County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Ms. Emily Lawton, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone: (919) 856–4350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to construct the Pittsboro Bypass. The Pittsboro North-South Bypass is a proposed multi-lane, controlled access freeway on new location that begins at US 15–501 south of Pittsboro and ends at the US 64 Bypass. The proposed improvements are expected to be implemented in multiple stages. The project would begin with the construction of a two-lane shoulder section for the entire project length, an interchange at US 64 Bypass, acquisition of right-of-way to accommodate an ultimate four-lane divided facility with full control of access, and acquisition of right-of-way for three future interchanges. The final stages of the project would include the remaining construction to provide a four-lane, median-divided section with additional interchanges at locations to be determined.

Construction of the proposed freeway is considered necessary to accommodate the existing and projected traffic demand through the Town of Pittsboro, in Chatham County. The preliminary study area encompasses the entire Town of Pittsboro, as well as outlying rural areas. The study area is bounded by the Haw River to the east, Rocky River and Deep River to the south, Harlands Creek to the west, and Russell Chapel Road (SR 1520) to the north. Study alternatives will be chosen that best suit the Purpose and Need for the Project. Potential alternatives to be considered include (1) taking no action; (2) using alternative travel modes; (3) improving the existing facilities through the Town of Pittsboro (US 15–501 and US 64); and, (4) construction of a multi-lane, controlled access facility on new location. Design variations of alignment and grade will be incorporated into the study of each of the build alternatives.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. Citizen informational workshops will be held in the project area throughout the study process. In addition, a public hearing will be held. Public notice will be given of the time and place of the workshops and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provide above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Emily Lawton,

Operations Engineer, Raleigh, NC.

[FR Doc. 01–23026 Filed 9–12–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Erie County, NY

AGENCY: Federal Highway Administration (FHWA), New York State Department of Transportation (NYSDOT) DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the Southtowns Connector/Buffalo Outer Harbor scoping process has resulted in a major revision to the project's alternatives. Previously, the range of 'Build Alternatives' included new freeway extensions, added freeway capacity or a new transit way. The environmental impact statement will now be progressed with a combination of a new arterial, existing local street/arterial improvements and improved transit/pedestrian/bicyclist facilities.

FOR FURTHER INFORMATION CONTACT: Robert E. Arnold, Division Administrator, Federal Highway Administration, Leo O'Brien Federal Building—7th Floor, Albany, New York 12207, Telephone (518) 431–4127 or Brian O. Rowback, Regional Director, New York State Department of Transportation, 125 Main Street, Buffalo, New York 14203, Telephone: (716) 847–3238.

SUPPLEMENTARY INFORMATION: The Federal Administration, in cooperation with the New York State Department of Transportation (NYSDOT), will prepare an environmental impact statement (EIS) for the proposed Southtowns Connector/Buffalo Outer Harbor Project in Erie County, New York. The proposed improvements could include existing street and arterial road system consolidation, additional arterial street capacity and improved transit/pedestrian/bicyclist facilities. These improvements are considered necessary because the existing transportation facilities do not provide for waterfront access, adequately connect development sites, provide sufficient capacity or include provisions for multi-modal uses. Alternatives under consideration are: (1) taking no action, (2) transportation systems management (improvement existing facility efficiency) and (3) provide existing street and arterial improvements and a new arterial street. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, local agencies and to private organizations and citizens who have previously expressed interest or are known to have an interest in this proposal. A formal scoping process will be followed for this revised project proposal. This process will include public and agency meetings to be scheduled. Advance notice will be provided through the media. In addition, public hearings will be held. The draft EIS will be available for public and agency review and comment prior to these public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all agencies and interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the address provided above.

Authority 23 U.S.C. 315, 23 CFR 771.123.

Issued on: September 5, 2001.

Douglas P. Conlan,

District Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 01–22952 Filed 9–12–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Highway Administration

Environmental Impact Statement: St. Charles, Jefferson and Orleans Parishes, Louisiana Agencies: Federal Transit Administration (FTA) and Federal Highway Administration (FHWA), Department of Transportation (DOT)

ACTION: Notice of intent to prepare environmental documents, including an environmental impact statement for highway component and an environmental impact statement for transit rail component.

SUMMARY: The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), in cooperation with the Louisiana Department of Transportation and Development (LDOTD) and the Regional Planning Commission (RPC) are issuing this notice to advise interested agencies and the public that, in accordance with the National Environmental Policy Act (NEPA), an Environmental Impact Statement (EIS) will be prepared for the following projects in the East-West Corridor in St. Charles, Jefferson and Orleans Parishes in Louisiana:

1. A rail transit connector between the New Orleans Central Business District (CBD) and the Louis Armstrong New Orleans International Airport (LANOIA); and

2. Extending the existing Earhart Expressway from its terminus at LA 3154 (Dickory Avenue) to the vicinity of Interstate 310.

These proposed transportation projects were identified in a Major Investment Study (MIS) completed in 1999. In addition to the proposed improvements identified as the Locally Preferred Alternative in the MIS, the No-Build Alternative and new alternatives generated through the Scoping Process will be evaluated. Scoping will be accomplished through coordination with interested persons, organizations and federal, state and local agencies. Four (4) public scoping meetings and one (1) interagency scoping meeting are currently planned.

Based on the results of the Scoping Process, FHWA and FTA will make the following determinations regarding the preparation of environmental documentation under NEPA:

1. Identification of environmental issues to be addressed;

2. Identification of appropriate alternatives for evaluation;

3. How cumulative environmental effects of the projects will be addressed; and

4. The need for a separate Environmental Impact Statement for each of the proposed projects, or for a single, combined Environmental Impact Statement for both projects.

FHWA and FTA currently propose to proceed with the preparation of separate environmental documents for each project. FHWA is serving as the federal lead agency for the extension of the existing Earhart Expressway. FTA is serving as the federal lead agency for the rail transit connector between the CBD and the LANOIA. At the conclusion of the Scoping Process, based on the agency and public comment received, FHWA and FTA will either continue with the preparation of two individual Environmental Impact Statements, will proceed with a single Environmental Impact Statement for both projects, or may proceed with an Environmental Assessment for either of the projects, if appropriate.

DATES: Interagency and public scoping and information meetings will be held during the week of October 8th.

Interagency Scoping Meeting: Wednesday, October 10th, 2001 from 10 a.m. to noon, at the Regional Planning Commission's 21st Floor Conference Room at 1340 Poydras Street in New Orleans, Louisiana 70122.

Public Scoping Meetings: Wednesday, October 10th, 2001 from 7 p.m. to 9 p.m. at Xavier University Auditorium in the Xavier University Administration Building at 1 Drexel Drive in New Orleans, Louisiana 70125; Thursday, October 11th, 2001 from 7 p.m. to 9 p.m. at the Joseph S. Yenni Building Council Chambers at 1221 Elmwood Park Boulevard in Jefferson, Louisiana 70123; Saturday, October 13th, 2001 from 9 a.m. to 11 a.m. at the R.J. Bunche Middle School Gymnasium at 8101 Simon Street in Metairie, Louisiana 70003; and Saturday, October 13th, 2001 from 11 a.m. to 1 p.m. at the R.J. Bunche Middle School Gymnasium at 8101 Simon Street in Metairie, Louisiana 70003.

ADDRESSES: Written comments on the scope should be sent by November 1, 2001, to either Mr. William Farr, Programs Operations Manager, Federal Highway Administration, 5304 Flanders Drive, Suite A, Baton Rouge, Louisiana 70808, or Mr. John Sweek, Community Planner, Federal Transit Administration, Region VI, 819 Taylor Street, Fort Worth, Texas, 76102. See **DATES** above for addresses of scoping meeting locations.

FOR FURTHER INFORMATION CONTACT: Mr. William Farr, Programs Operations Manager, Federal Highway Administration, 5304 Flanders Drive, Suite A, Baton Rouge, Louisiana 70808, Telephone: (225) 757–7600; or Mr. John Sweek, Community Planner, Federal Transit Administration, Region VI, 819 Taylor Street, Fort Worth, Texas, 76102, Telephone: (817) 978–0571.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FHWA and FTA will hold a total of four public scoping meetings on Wednesday, Thursday, and Saturday, October 10, 11, and 13. Two evening public scoping meetings will be held between 7 p.m. and 9 p.m. on Wednesday and Thursday, October 10 and 11, in the Xavier University Auditorium in New Orleans and Joseph

S. Yenni Building Council Chambers in Jefferson, respectively on these dates. Two morning public scoping meeting sessions will be held on Saturday, October 13, at 9 a.m. and at 11 a.m. in the R.J. Bunch Middle School Gymnasium in Metairie. An Open House Session will be made available in the R.J. Bunch Middle School Gymnasium from 1 p.m until 3 p.m., following the public scoping meeting sessions. All meeting locations are accessible to individuals with disabilities. Individuals with special needs should contact the project's public participation coordinator at 504–488–6100.

Interested individuals, organizations, and public agencies are invited to attend the scoping meetings and participate in identifying any important environmental issues related to the proposed alternatives and suggesting alternatives which are more economical or which have less environmental effects while achieving similar transportation objectives. An information packet, referred to as the Scoping Booklet, will be distributed to all public agencies and interested individuals and will be available at the meetings. Others may request the Scoping Booklet by contacting Mr. William Farr or Mr. John Sweek at the addresses listed above in **ADDRESSES**. Comments regarding preferences for a particular alternative should be reserved for the comment period for the draft environmental documentation. Comments during the scoping period should focus on the issues and alternative for analysis and not on a preference for a particular alternative.

Scoping comments may be made a the scoping meetings or directed to Mr. William Farr on Mr. John Sweek at the addresses listed above in **ADDRESSES** by November 1, 2001.

II. Description of the Project Area and Need

The East-West Corridor is located in St. Charles, Jefferson and Orleans Parishes, Louisiana. It extends approximately 17 miles from the vicinity of I–310 in St. Charles Parish to the New Orleans CBD, serving an area that contains more than one million residents, including several neighborhoods with large numbers of transit-dependent residents. Major destinations within the Corridor include LANOIA, Louisiana Technical College, Zephyr Stadium, Elmwood Industrial Area, and Xavier University. Key destinations in the CBD include the Louisiana Superdome, the Ernest Morial Convention Center, the New Orleans Arena, and the New Orleans Regional Medical Center. The corridor is currently served by taxi service and one bus transit route from the Louis Armstrong New Orleans International Airport in Jefferson Parish to the New Orleans CBD.

The East-West Corridor has the highest volume of travel demand and bus ridership within the New Orleans metropolitan area. The major east-west arteries (I–10 and US 61) have serious congestion, and Earhart Expressway abruptly ends at LA 3154 (Dickory Avenue), a minor arterial at its western terminus, rendering it ineffective as a viable east-west route. The existing bus route is not sufficient to address the mobility needs in the corridor and the large numbers of transit-dependent riders and commuters. As a result, travelers in the East-West Corridor often experience excessive travel times and delay. These travel times are expected to increase as travel demand increases in the East-West Corridor.

A Major Investment Study (MIS) completed in 1999 for the RPC identified a (LPA) locally preferred alternative with two primary components: A rail transit system linking the LANOIA to downtown New Orleans; and (2) extending LA Route 3139, also known as Earhart Expressway, west to the vicinity of Interstate 310. Both of the proposed projects were deemed necessary to alleviate congestion within the corridor. However, each project has its own unique objectives.

The objectives of the proposed rail transit component include:

- Address the increasing mobility needs within the corridor
- Increase and improve mobility choice for New Orleans, East Jefferson parish, and River Parishes commuters
- Increase access to and from major regional trip generators and attractions
- Promote compatible land use
- Increase and improve the mobility access opportunities to disadvantaged populations
- Promote economic development by increasing labor productivity through travel efficiencies
- Decrease local dependence on automobiles and reduce energy usage
- Provide flexibility in future regional planning transit efforts
- Improve access to and from the airport

The objectives of the proposed roadway expansion are to:

- Improve East-West Corridor system linkage for roadway passenger traffic
- Improve the efficiency of commercial vehicle operations within the New Orleans metro region
- Promote economic development and associated with goods movement
- Improve efficiency in modal relationships in the region by improving bus transit times, shuttle vehicle transit times, and overall travel costs
- Improving access to transit park-n-ride

III. Alternatives

It is anticipated that several alternatives will be identified during the scoping and environmental analysis processes. However, at this time, alternatives to be considered for the rail transit include:

- A ''no-build'' alternative. There will be no changes in transportation services or facilities in the Corridor beyond already committed projects. This includes only those transit improvements defined in the appropriate agencies' Long Range Transportation Plans and Transit Development Plans for which funding has been committed.
- Transportation Systems Management Alternative—Low cost infrastructure and bus transit improvements, Intelligent Transportation Systems (ITS), bus operations, and Transportation Systems Management improvements will be included in this alternative.
- The construction of a rail transit system. The eastern terminus of the proposed rail transit alternative would be the CBD in Orleans Parish and the western terminus would be the LANOIA in Jefferson Parish. It would follow the abandoned Kansas City Southern Railroad for approximately 5 miles, where it would connect to the rail owned by the Union Passenger Terminal via right-of-way owned by Canadian National Illinois Central Railroad and follow this existing alignment or some other alignment to the CBD. Light rail transit (LRT) and diesel multiple units (DMU), among others will be considered. This alternative would also include all facilities associated with the construction and operations of a light rail transit line, including right of way, structures, track, stations, park-and-ride lots, storage, and maintenance facilities as well as respective rail and bus operating plans.

Alternatives to be considered for Earhart Expressway include:

- A ''no-build'' alternative. Existing conditions will remain as they are. Only those improvements that have already been approved will be implemented.
- Transportation Systems Management Improvements-Low cost infrastructure and traffic management improvements, including signalization, ITS, and similar.
- Improvement alternatives including the upgrade of US 61 (Airline Drive) or

the extension of LA 3139 (Earhart Expressway) from LA 3154 (Dickory Avenue) would be considered. The road expansion will follow a westward alignment and terminate in the vicinity of I–310. The approximate length of the proposed road component is 10 miles.

IV. Probable Effects

The environmental documents will be prepared in accordance with the 1969 National Environmental Policy Act (NEPA). Accordingly, all potential impacts to the physical, natural, and socioeconomic environments will be evaluated. Concerns to be addressed in NEPA Documents include: aesthetics/visual resources, property value effects, local traffic and travel patterns, land use, noise and vibration, wetlands, construction impacts, Environmental Justice/Title VI issues, and cumulative impacts of concurrent and consecutive implementation of both alternatives.

V. Procedures

In accordance with the regulations and guidance by the Council on Environmental Quality (CEQ), as well as 23 CFR part 450 and 23 policies, the NEPA Documents will include an evaluation of the social, economic, and environmental impacts of the alternatives. The NEPA Documents will also comply with the requirements of the Clean Air Act Amendments of 1990 (CAAA) and with Executive Order 12898 on Environmental Justice. The NEPA Documents will also meet the requirements of the U.S. Environmental Protection Agency's transportation conformity regulations (40 CFR part 93 and 23 CFR 450.322(b)(8)). After their publication, the draft NEPA Documents will be available for public agency review and comment.

The Final NEPA Documents will consider the public and agency comments received during the public and agency circulation of the NEPA Documents and will identify the preferred alternatives. Opportunity for additional public comment will be provided throughout all phases of the project development.

Issued on: September 5, 2001.

William A. Sussman,

Division Administrator, Federal Highway Administration.

[FR Doc. 01–23027 Filed 9–12–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 590X)]

CSX Transportation, Inc.—Abandonment Exemption—Between Memphis and Cordova, in Shelby County, TN

On August 24, 2001, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Memphis to Cordova Branch, extending from milepost ONI 224.00 near Memphis to milepost ONI 210.66 near Cordova, in Shelby County, TN, a distance of 13.34 miles. The line traverses U.S. Postal Service Zip Codes 38111, 38112, 38117, 38120, 38122, and 38018, and includes the station of Cordova at milepost ONI 210.66.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 12, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 3, 2001. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 590X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, Esq., Ball Janik, LLP, 1455 F Street, NW., Washington, DC 20005. Replies to the CSXT petition are due on or before October 3, 2001.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: September 6, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–22924 Filed 9–12–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 5, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 15, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1205.
Form Number: IRS Form 8826.

Type of Review: Extension.
Title: Disabled Access Credit.
Description: Code section 44 allows eligible small businesses to claim a non-refundable income tax credit of 50% of the amount of eligible access expenditures for any tax year that exceed $250 but do not exceed $10,250. Form 8826 figures the credit and the tax limit.
Respondents: Business or other for-profit, Individuals or households, Farms.
Estimated Number of Respondents/Recordkeeper: 26,133.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 hr., 39 min.
Learning about the law or the form—42 min.
Preparing and sending the form to the IRS—51 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 240,424 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports Management Officer.
[FR Doc. 01–22956 Filed 9–12–01; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before November 13, 2001.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, FAX Number (202) 906–6518, or e-mail to *infocollection.comments@ots.treas.gov.* OTS will post any comments and the related index on the OTS Internet Site at www.ots.treas.gov.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Sonja White, National Coordinator, Community Affairs, (202) 906–7857, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Minority Thrift Certification Form.
OMB Number: 1550–0096.
Form Number: OTS Form 1661.
Regulation requirement: N/A.
Description: This information is needed to help OTS maintain a reliable source of information regarding the universe of minority-owned thrifts, in accordance with our responsibilities under Section 308 of FIRREA.
Type of Review: Renewal.
Affected Public: Savings Associations and Savings Banks.
Estimated Number of Respondents: 32.
Estimated Frequency of Response: Annually.
Estimated Burden Hours per Response: .5 hours.
Estimated Total Burden: 16 hours.
Clearance Officer: Sally W. Watts, (202) 906–7380, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: September 7, 2001.

Deborah Dakin,
Deputy Chief Counsel, Regulations & Legislation.
[FR Doc. 01–22954 Filed 9–12–01; 8:45 am]
BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974, Amendment of Three Systems of Records

ACTION: Notice.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) proposes amending three existing systems of records (44VA01, 58VA21/22 and 81VA01) to: (1) Amend a routine use in one system (44VA01) to clarify that information released under the routine use is at VA's initiative and that certain names and address are released only to Federal law enforcement entities under the routine use; (2) add a routine use relating to release of information about representative misconduct to each of the systems; (3) amend two of the systems (58VA21/22 and 81VA01) to clarify what individuals are covered by the systems; (4) add a statement of purpose to each of the systems; and (5) to update information such as citations and contact information in each of the systems.

DATES: The proposed amendments will be effective 30 calendar days from the date this publication, September 13, 2001, unless comments are received before this date which would result in a contrary determination.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to ''OGCRegulations@mail.va.gov''. All relevant material received before October 15, 2001, will be considered. All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30

p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: VA provides benefits and services to many of America's approximately 25 million living veterans, as well as to veterans' survivors and dependents.

Amendment of Routine Use: VA proposes 2 amendments to routine use number 2 in system of records 44VA01. This routine use concerns referral of agency records showing violation of law to law enforcement authorities. One amendment clarifies that the referral referenced is referral on VA's initiative. In addition to requirements of the Privacy Act, 5 U.S.C. 552a, VA must comply with information disclosure limitations in 38 U.S.C. 5701 which, among other things, restrict release of the names and address of veterans and their dependents. The second proposed amendment to this routine use clarifies that, except for referral to other Federal entities, the information referred under this routine use does not include such names and addresses.

Additional Routine Use: Claimants for VA benefits are entitled to representation throughout the VA claims adjudication process. VA regulates representatives appearing in VA claims matters to promote representational competency and the ethical treatment of represented VA claimants. *See generally* 38 U.S.C. 5901–05; 38 CFR 14.626–.643, 20.600–.610.

In the great majority of cases, representational services are ably provided by well-trained, responsible representatives of State and national veterans' service organizations, agents recognized by VA as qualified to act as representatives, attorneys-at-law and others. Occasionally, however, representatives may engage in unethical or illegal conduct; for example by charging fees where none are authorized by law, willfully and deliberately violating agency rules of practice and procedure, or defrauding VA claimants.

The routine use added to these three systems of records would permit VA to disclose information in its files concerning a representative's misconduct to Federal, State, or local law enforcement authorities and to authorities responsible for the professional licensing and discipline of representatives, such as State or local bar associations.

Changes to update these systems: System 44VA01 already provides that representatives are included in the categories of individuals covered by the system. These amendments clarify that that is also true of systems 58VA21/22 and 81VA01.

The Office of the Federal Register of the National Archives and Records Administration now includes ''Purpose(s)'' among the required data elements in published systems of records notices. These amendments add purpose sections to each of the three systems amended.

Citations to title 38, United States Code, have been revised throughout to reflect renumbering of that title that occurred after these systems were originally established. A citation to 42 U.S.C. 209dd–3 and 290ee–3 has been removed from a note in 44VA01. The note concerns special protection afforded by 38 U.S.C. 7332 (formerly § 4132) to records concerning drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia. The cited title 42 provisions were the authority for regulations of the Secretary of Health and Human Services concerning the confidentiality of alcohol and drug abuse patient records which VA followed prior to the adoption of its own regulations at 38 CFR 1.460–.494. For additional information, see 60 FR 63926 (1995).

Finally, these proposed amendments update addresses and telephone numbers that have changed since notices of these systems were published.

VA has determined that release of information under circumstances such as those described above is a necessary and proper use of information in these systems of records and that the specific routine use proposed for the transfer of this information is appropriate.

The systems of records VA proposes to amend, which are contained in the **Federal Register** at the pages indicated, are:

44VA01, Veterans Appellate Records System-VA, established at 40 FR 38095 (8/26/75) and amended at 56 FR 15663 (4/17/91) and 63 FR 37941 (7/14/98).

58VA21/22, Compensation, Pension, Education and Rehabilitation Records—VA, established at 41 FR 9294 (3/3/76) and last amended at 63 FR 37941 (7/14/98) and 65 FR 37605 (6/15/00), with other amendments as cited therein.

81VA01, Representatives' Fee Agreement Records System—VA, established at 56 FR 18874 (4/24/91) and amended at 57 FR 8792 (3/12/92) and 63 FR 37941 (7/14/98).

A ''Report of Altered System'' and an advance copy of the revised system have been sent to the chairmen and ranking members of the Committee on Governmental Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate, and to the Office of Management and Budget, as required by 5 U.S.C. 552a(o) (Privacy Act) and guidelines issued by the Office of Management and Budget.

Approved: August 27, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

Notice of Amendment of Systems of Records

1. In the system identified as 44VA01, ''Veterans Appellate Records System—VA'', established at 40 FR 38095 (8/26/75) and amended at 56 FR 15663 (4/17/91) and 63 FR 37941 (7/14/98), authority citations are updated, a routine use is amended, a purpose section and a routine use are added, and telephone and address information are updated as follows:

44VA01

SYSTEM NAME:

Veterans Appellate Records System—VA.

SYSTEM LOCATION:

Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420, and its contractor, Promisel & Korn, Inc., 7012 West Greenvale Parkway, Chevy Chase, MD 20815.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 7101(a), 7104; 5 U.S.C. 552.

PURPOSE(S):

Initial decisions on claims for Federal veterans' benefits are made at VA field offices throughout the nation. Claimants may appeal those decisions to the Board of Veterans' Appeals. See 38 U.S.C. Chapter 71. The Board gathers, or creates, these records in carry out its appellate functions.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

* * * * *

2. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, VA may refer the relevant records in the system of records, as a routine use, to the appropriate agency, whether Federal, State, local or foreign,

charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto. Names and home addresses of veterans and their dependents will be released on VA's initiative under this routine use only to Federal entities.

* * * * *

7. Where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person or organization representing a person in a matter before VA, a record from this system may be disclosed, on VA's initiative, to any or all of the following: (1) Applicable civil or criminal law enforcement authorities and (2) a person or entity responsible for the licensing, supervision, or professional discipline of the person or organization acting as representative. Names and home addresses of veterans and their dependents will be released on VA's initiative under this routine use only to Federal entities.

Note: Any record maintained in this system of records which may include information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia will be disclosed pursuant to an applicable routine use for the system only when permitted by 38 U.S.C. 7332.

* * * * *

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to information contained in this system of records may write, call or visit the Board of Veterans' Appeals Freedom of Information Act Officer whose address and telephone number are as follows: Freedom of Information Act Officer (01C1), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–9252.

* * * * *

2. In the system identified as 58VA21/22, ''Compensation, Pension, Education and Rehabilitation Records—VA'', established at 41 FR 9294 (March 3, 1976) and last amended at 63 FR 37941 (7/14/98) and 65 FR 37605 (6/15/00), with other amendments as cited therein, the description of the categories of individuals covered by the system is amended, the authority for maintenance of the system is updated, and a purpose section and a routine use are added as follows:

58VA21/22

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records—VA.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

* * * * *

20. Representatives of individuals covered by the system.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, section 501(a) and Chapters 11, 13, 15, 18, 23, 30, 31, 32, 34, 35, 36, 39, 51, 53, 55.

PURPOSE(S):

Veterans, and their survivors and dependents, file claims for a wide variety of Federal veterans' benefits administered by VA at VA facilities located throughout the nation. See the statutory provisions cited in ''Authority for maintenance of the system.'' VA gathers, or creates, these records in order to enable it to administer these statutory benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

63. Where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person or organization representing a person in a matter before VA, a record from this system may be disclosed, on VA's initiative, to any or all of the following: (1) Applicable civil or criminal law enforcement authorities and (2) a person or entity responsible for the licensing, supervision, or professional discipline of the person or organization acting as representative. Names and home addresses of veterans and their dependents will be released on VA's initiative under this routine use only to Federal entities.

3. In the system identified as 81VA01 ''Representatives' Fee Agreement Records System—VA,'' appearing at 56 FR 18874 (4/24/91) and amended at 57 FR 8792 (3/12/92) and 63 FR 37941 (7/14/98), the description of the categories of individuals covered by the system is amended, a purpose statement and a routine use are added, and contact information is updated as follows:

81VA01

SYSTEM NAME:

Representatives' Fee Agreement Records System—VA.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

* * *

PURPOSE(S):

Claims agents and attorneys-at-law who charge fees for representing veterans and their survivors and dependents in pursuing their claims for Federal veterans' benefits are required to file copies of their fee agreements with the Board. The Board, on its own motion or the motion of a party to the agreement, may then review the agreement and ''may order a reduction in the fee called for in the agreement if the Board finds that the fee is excessive or unreasonable. 38 U.S.C. 5904(c)(2). The Board gathers, or creates, these records in order to enable it to carry out these fee agreement filing and review functions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons seeking, receiving, or who have received benefits from the Department of Veterans Affairs who utilize the services of attorneys-at-law or accredited agents to represent them; such attorneys-at-law and accredited agents; and VA employees whose duties involve the processing of matters related to representatives' fee agreements.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

6. Where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person or organization representing a person in a matter before VA, a record from this system may be disclosed, on VA's initiative, to any or all of the following: (1) applicable civil or criminal law enforcement authorities and (2) a person or entity responsible for the licensing, supervision, or professional discipline of the person or organization acting as representative. Names and home addresses of veterans and their dependents will be released on VA's initiative under this routine use only to Federal entities.

* * * * *

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to information contained in this system of records may write, call or visit the Board of Veterans' Appeals Freedom of Information Act Officer whose address and telephone number are as follows: Freedom of Information Act Officer (01C1), Board of Veterans' Appeals, 810 Vermont

Avenue, NW, Washington, DC 20420, (202) 565–9252.

* * * * *

[FR Doc. 01–23042 Filed 9–12–01; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
September 13, 2001

Part II

Department of Housing and Urban Development

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750
Risk-Based Capital; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA02

Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is directed by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 to issue a risk-based capital regulation for the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association (collectively, the Enterprises). The regulation specifies the risk-based capital stress test that will be used to determine each Enterprise's risk-based capital requirement and, along with the minimum capital requirement, to determine each Enterprise's capital classification for purposes of possible supervisory action.

EFFECTIVE DATE: September 13, 2001.

FOR FURTHER INFORMATION CONTACT: Edward J. Szymanoski, Acting Associate Director, Office of Risk Analysis and Model Development; Dorothy J. Acosta, Deputy General Counsel; or David A. Felt, Associate General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3800 (not a toll-free number). The telephone number for the telecommunications device for the deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Office of Federal Housing Enterprise Oversight (OFHEO) was established by title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act). OFHEO is an independent office within the U.S. Department of Housing and Urban Development (HUD) with responsibility for examining and regulating the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) (collectively, the Enterprises) and ensuring that they are adequately capitalized. The 1992 Act expressly directs OFHEO's Director (the Director) to issue a regulation establishing the risk-based capital standard.[1]

Fannie Mae and Freddie Mac are government-sponsored Enterprises that engage in two principal businesses: investing in residential mortgages and guaranteeing securities backed by residential mortgages. The securities the Enterprises guarantee and the debt instruments they issue are not backed by the full faith and credit of the United States and nothing in this document should be construed otherwise.[2] Nevertheless, financial markets treat Enterprise securities more favorably than securities issued by comparable firms. The market prices for Enterprise debt and mortgage-backed securities (MBS) and the fact that the market does not require that those securities be rated by a nationally recognized rating statistical organization suggest that investors perceive that the government implicitly guarantees those securities. Factors contributing to this perception include the Enterprises' public purposes, their Congressional charters, their potential direct access to U.S. Department of Treasury (Treasury) funds, and the statutory exemptions of their debt and MBS from otherwise mandatory investor protection provisions.[3]

B. Statutory Requirements for Risk-Based Capital

The final rule implements the 1992 Act's requirement to establish, by regulation, a risk-based capital ''stress test'' to determine the amount of capital each Enterprise needs to survive a ten-year period characterized by large credit losses and large movements in interest rates (stress period).[4] The 1992 Act also provides that, in order to meet its risk-based capital standard, each Enterprise is required to maintain an additional 30 percent of this amount to protect against management and operations risk.[5] The level of capital[6] required under this standard for an Enterprise will reflect that Enterprise's specific risk profile at the time the stress test is run.

The 1992 Act requires that the stress test subject each Enterprise to large credit losses on the mortgages it owns or guarantees. The rates of default and severity that yield these losses must be reasonably related to the highest rates of default and severity of mortgage losses experienced during a period of at least two consecutive years in contiguous areas of the United States that together contain at least five percent of the total U.S. population (benchmark loss experience).[7] The 1992 Act also prescribes two interest rate scenarios, one with rates falling and the other with rates rising.[8] The risk-based capital amount is based on whichever scenario requires more capital for the Enterprise. In prescribing the two scenarios, the 1992 Act describes the path of the ten-year constant maturity yield (CMT) for each scenario and directs OFHEO to establish the yields on Treasury instruments of other maturities in a manner reasonably related to historical experience and judged reasonable by the Director.

Congress provided OFHEO significant discretion to determine many aspects of the risk-based capital test. This flexibility is evidenced by section 1361(b), which states that ''[i]n establishing the risk-based capital test under subsection (a), the Director shall take into account appropriate distinctions among types of mortgage products, differences in seasoning of mortgages, and any other factors the Director considers appropriate.''[9] The subsection further states that other non-specified characteristics of the stress period, ''such as prepayment experience and dividend policies, will be those determined by the Director, on the basis of available information, to be most consistent with the stress period.''[10] The statute also provides OFHEO flexibility in establishing other aspects of the stress test, including ''the rate of default and severity,''[11] the yields on Treasury securities relative to the ten-year CMT yield,[12] and the definition of ''type of mortgage product.''[13]

[1] 12 U.S.C. 4513(b)(1).

[2] *See* Federal Home Loan Mortgage Corporation Act, section 306(h)(2) (12 U.S.C. 1455(h)(2)); Federal National Mortgage Association Charter Act, section 304(b) (12 U.S.C. 1719(b)); and 1992 Act, section 1302(4) (12 U.S.C. 4501(4)).

[3] *See, e.g.,* 12 U.S.C. 24 (authorizing unlimited investment by national banks in obligations of or issued by the Enterprises); 12 U.S.C. 1455(g), 1719(d), 1723(c) (exempting securities from oversight from Federal regulators); 15 U.S.C. 77r–1(a) (preempting State law that would treat Enterprise securities differently from obligations of the United States for investment purposes); 15 U.S.C. 77r–1(c) (exempting Enterprise securities from State blue sky laws).

[4] 12 U.S.C. 4611.

[5] 12 U.S.C. 4611(c)(2).

[6] For purposes of the risk-based capital standard, the term ''capital'' means ''total capital'' as defined under section 1303(18) of the 1992 Act (12 U.S.C. 4502(18)).

[7] 12 U.S.C. 4611(a)(1).

[8] 12 U.S.C. 4611(a)(2).

[9] 12 U.S.C. 4611(b)(1).

[10] 12 U.S.C. 4611(b)(2).

[11] 12 U.S.C. 4611(a)(1).

[12] 12 U.S.C. 4611(a)(2).

[13] 12 U.S.C. 4611(d)(2).

The 1992 Act requires that, initially, the stress test not provide for the conduct of new business by the Enterprises during the stress period, except to fulfill contractual commitments to purchase mortgages or issue securities. Four years after the final risk-based capital regulation is issued, OFHEO may modify the stress test to incorporate assumptions about additional new business conducted during the stress period.[14] In doing so, OFHEO is required to take into consideration the results of studies conducted by the Congressional Budget Office and the Comptroller General of the United States on the advisability and appropriate form of new business assumptions. The 1992 Act requires that the studies be completed within the first year after issuance of the final regulation.[15]

C. Rulemaking Chronology

OFHEO has issued a series of **Federal Register** notices soliciting comment on the development of the risk-based capital regulation. The first notice, an Advance Notice of Proposed Rulemaking (ANPR),[16] sought public comment on a number of issues relating to the development of the regulation.[17] OFHEO received 17 comments on the ANPR from a variety of interested parties, including other Federal agencies, Fannie Mae, Freddie Mac, trade associations, and financial organizations. OFHEO considered these comments in the development of two subsequent Notices of Proposed Rulemaking (NPRs), each addressing different components of the risk-based capital regulation. The first Notice of Proposed Rulemaking (NPR1)[18] addressed two issues: (1) The methodology for identifying the benchmark loss experience, and (2) the use of OFHEO's House Price Index (HPI) to update original loan-to-value ratios (LTVs) and to determine house price appreciation paths during the stress period.[19] NPR1 included OFHEO's responses to all of the ANPR comments that related to those two areas.[20] The second Notice of Proposed Rulemaking (NPR2) proposed the remaining specifications of the stress test, including how the HPI would be used and how losses predicted by the stress test would be calibrated to the benchmark loss experience.[21] In addition, OFHEO issued a notice soliciting reply comments to provide interested parties an opportunity to respond to other commenters that addressed NPR2.[22]

OFHEO received comments from 11 commenters on NPR1 and 48 commenters on NPR2. These commenters included Fannie Mae, Freddie Mac, housing and financial trade associations, financial services companies, housing advocacy groups, and other interested parties. Approximately 12 commenters, including the Enterprises, GE Capital Mortgage Corporation, Mortgage Insurance Companies of America, The Consumer Mortgage Coalition, and the Mortgage Bankers Association of America submitted reply comments to NPR2.

The final rule reflects OFHEO's consideration of all of the comments on NPR1 and NPR2, including the reply comments. A summary of the comments by topic and OFHEO's response is set forth below in III., Comments and Responses.

II. Summary of the Stress Test

A. Overview

OFHEO's risk-based capital regulation is part of a larger regulatory framework for the Enterprises that includes a minimum capital requirement and a comprehensive examination program. The purpose of this regulatory framework is to reduce the risk that an Enterprise will fail by ensuring that the Enterprises are capitalized adequately and operating safely, in accordance with the 1992 Act. The 1992 Act requires OFHEO to develop a stress test that simulates the effects of ten years of adverse economic conditions on the existing assets, liabilities, and off-balance-sheet obligations of the Enterprises. OFHEO issued for comment two proposals that implement this requirement.

This summary describes the stress test adopted in the final rule after considering extensive comments from interested parties on the risk-based capital proposals. It includes changes made to the stress test to address the concerns of the commenters where possible and appropriate. These changes are consistent with applicable statutory requirements and with OFHEO's obligation to promote safety and soundness of the housing finance system and to ensure the Enterprises' ability to fulfill their important public missions. These changes are discussed in section III., Comments and Responses. In addition, the final rule includes technical and clarifying changes to the risk-based capital proposals.

The final rule describes a stress test that meets the statutory requirements of the 1992 Act and captures accurately and appropriately the risks of the Enterprises' businesses. The stress test determines, as of a point in time, how much capital each Enterprise would require to survive the economically stressful conditions outlined by the 1992 Act. At a minimum, the stress test will be run quarterly using data on interest rates, housing markets, and an Enterprise's assets, liabilities, off-balance-sheet items, and operations. The stress test is comprised of econometric, financial, and accounting models used to simulate Enterprise financial performance over a ten-year period called the ''stress period.'' The final regulation determines the risk-based capital requirement by computing the amount of starting capital that would permit an Enterprise to maintain a positive capital position throughout the stress period (stress test capital) and adding 30 percent of that amount to cover management and operations risk.

B. Data

OFHEO uses data from the Enterprises and public sources to run the stress test. The stress test utilizes data that characterize, at a point in time, an Enterprise's assets, liabilities, and off-balance sheet obligations, as well as data on economic conditions, such as interest rates and house prices. OFHEO obtains data on economic conditions from public sources. The Enterprises are required to submit data to OFHEO at least quarterly for all on- and off-balance-sheet instruments in a specified format, which is input directly into the computer model. This data submission is called the Risk-Based Capital Report (RBC Report) and serves as the financial ''starting position'' of an Enterprise for the date for which the stress test is run.

[14] 12 U.S.C. 4611(a)(3)(B) and (D).

[15] 12 U.S.C. 4611(a)(3)(C).

[16] Risk-Based Capital, ANPR, 60 FR 7468, February 8, 1995.

[17] The comment period for the ANPR ended on May 9, 1995, and was extended through June 8, 1995. Risk-Based Capital, Extension of Public Comment Period for ANPR, 60 FR 25174, May 11, 1995.

[18] Risk-Based Capital, NPR1, 61 FR 29592, June 11, 1996.

[19] 61 FR 29616, June 11, 1996.

[20] The comment period for NPR1 ended on September 9, 1996, and was extended through October 24, 1996. Risk-Based Capital, Extension of Public Comment Period for NPR1, 61 FR 42824, August 19, 1996.

[21] Risk-Based Capital, Second Notice of Proposed Rulemaking (NPR2), 64 FR 18084, April 13, 1999. The agency extended the comment period twice. The first extension was until November 10, 1999 (64 FR 31756, June 14, 1999), and the second extension was until March 10, 2000 (64 FR 56274, October 19, 1999).

[22] Risk-Based Capital, Solicitation of Reply Comments, 65 FR 13251, March 13, 2000.

As a part of the RBC Report, the Enterprises report aggregated data from groups of loans having similar risk characteristics. The loans within these groups share common values for a set of classification variables. For single family loans, classification variables are original interest rate, current interest rate, original loan-to-value ratio (LTV), mortgage age, Census Division, loan size, status as securitized or unsecuritized, status as government or conventional loan, and product type (e.g. fixed rate, adjustable rate, balloons). Classification variables for multifamily loans are product type, original interest rate, current interest rate, original LTV, debt coverage ratio (DCR); [23] book of business designation,[24] status as securitized or unsecuritized, status as Government or conventional loan, status as interest only or amortizing, and a ratio update flag, which indicates whether LTV and DCR were updated at acquisition. Both single family and multifamily ARM loans are also classified by index, rate reset period, payment reset period, and cap type. These distinctions are associated with different risk characteristics. In this way, over 24 million loans can be aggregated into the minimum number of loan groups that captures important risk characteristics.

Loan groups of new mortgages are also created to simulate the fulfillment of commitments to purchase and/or securitize mortgages that are outstanding at the start of the stress test. The stress test adds new single family mortgages in one of four product types: 30-year fixed-rate, 15-year fixed-rate, one-year CMT adjustable-rate, and 7-year balloon. The percentage of each type added is based on the relative proportions of those types of loans securitized by an Enterprise that were originated during the six months preceding the start of the stress period. The mix of characteristics of these new loans also reflects the characteristics of the loans originated during the preceding six months. All new mortgages are considered to be securitized.

In the down-rate scenario, described below, the stress test specifies delivery of 100 percent of the loans that the Enterprise is obligated to accept under outstanding commitment agreements. These loans are added during the first three months of the stress period. In the up-rate scenario, described below, only 75 percent of these loans are added and deliveries are phased in during the first six months of the stress period. The new loan groups are then treated like the loan groups reported by the Enterprise in the RBC Report.

Because of the smaller number and greater diversity of the Enterprises' nonmortgage financial instruments, the stress test projects these cash flows at the individual instrument level, rather than at a group level. The RBC Report includes the instrument characteristics necessary to model the terms of the instruments, which include both investment and debt securities and derivative contracts.

C. Stress Test Conditions

1. Benchmark Loss Experience

To identify the stressful credit conditions that are the basis for credit losses in the stress test, (benchmark loss experience), OFHEO uses a methodology based on historical analysis of newly originated, 30-year, fixed-rate, first-lien mortgages on owner-occupied, single family properties. Using this methodology, OFHEO identifies the worst cumulative credit losses experienced by loans originated during a period of at least two consecutive years in contiguous states comprising at least five percent of the U.S. population, as required by the 1992 Act. Loans originated in Arkansas, Louisiana, Mississippi and Oklahoma in 1983 and 1984 currently serve as the benchmark loss experience. These loans (benchmark loans) had an average ten-year cumulative default rate of 14.9 percent and an average ten-year loss severity of 63.3 percent. The loss rate (default incidence times loss severity in the event of default, without considering the effect of credit enhancements) for this region and time period was 9.4 percent. OFHEO will continue to monitor loss data and may choose to establish a new benchmark loss experience if a higher loss rate for a different region and time period is determined using this methodology.

When the single family models of default and prepayment are applied to the benchmark loans, using the pattern of interest rates from the benchmark time and place, losses are close to those of benchmark loans. The difference results from the fact that OFHEO based its single family default and prepayment models on all Enterprise historical loan data, not just the limited data for benchmark loans for which the losses were particularly severe. This difference provides the basis for calibration factors for each LTV category, which the stress test applies to adjust the single family default rates upward or downward, making them more consistent with the benchmark loss experience. However, because the stress test simulates the performance of an Enterprise's entire mortgage portfolio at a point in time and includes loans of all types, ages, and characteristics, overall Enterprise mortgage loss rates in the stress test can be lower or higher than the loss rates for benchmark loans, even with the calibration adjustment.

Because there were very few Enterprise multifamily loans in the benchmark region and time period, the stress test uses patterns of vacancy rates and rent growth rates that are consistent with the benchmark time and place to determine property income, a key factor in determining defaults for multifamily loans. In this way, the stress test relates the performance of multifamily loans to the benchmark loss experience.

2. Interest Rates

Interest rates are a key component of the adverse economic conditions of the stress test. The 1992 Act specifies two paths for the ten-year Constant Maturity Treasury yield (CMT) during the stress period. During the first year of the stress period, the ten-year CMT:

- Falls by the lesser of 600 basis points below the average yield during the nine months preceding the stress period, or 60 percent of the average yield during the three years preceding the stress period, but in no case to a yield less than 50 percent of the average yield during the preceding nine months (down-rate scenario); or
- Rises by the greater of 600 basis points above the average yield during the nine months preceding the stress period, or 160 percent of the average yield during the three years preceding the stress period, but in no case to a yield greater than 175 percent of the average yield during the preceding nine months (up-rate scenario).

The ten-year CMT changes in twelve equal monthly increments from the starting point, which is the average of the daily ten-year CMT yields for the month preceding the stress period. The ten-year CMT stays at the new level for the remainder of the stress period.

The stress test establishes the Treasury yield curve for the stress period in relation to the prescribed movements in the ten-year CMT. In the down-rate scenario, the yield curve is upward sloping during the last nine years of the stress period; that is, short term rates are lower than long term rates. In the up-rate scenario, the Treasury yield curve is flat for the last nine years of the stress period; that is,

[23] DCR is the ratio of net operating income to mortgage payment for a specific property.

[24] ''Old book'' loans are those originated before 1988 for Fannie Mae and before 1993 for Freddie Mac. All other multifamily loans are considered ''new book'' loans.

yields of other maturities are equal to that of the ten-year CMT.

Because many different interest rates affect the Enterprises' business performance, the ten-year CMT and the Treasury yield curve are not the only interest rates that must be determined. For example, current mortgage rates impact prepayment rates; adjustable-rate mortgages periodically adjust according to various indexes; floating rate securities (assets and liabilities) and many rates associated with derivative contracts also adjust; and appropriate yields must be established for new debt and investments issued during the stress test. Thus, the stress test requires rates and indexes other than Treasury yields for the entire stress period. Some of the key rates that are used in the stress test are the Federal Funds Rate, London Inter-Bank Offered Rate (LIBOR), Federal Home Loan Bank 11th District Cost of Funds Index (COFI), and the Enterprise Cost of Funds. The stress test establishes these rates and indexes using an average of the ratio of each non-Treasury spread to its comparable CMT (the proportional spread) for the two-year period prior to the start of the stress test. Indexes of mortgage interest rates are calculated using the average absolute basis-point spread for the same two-year period.

3. Property Values

The 1992 Act requires OFHEO to consider the effect of loan "seasoning," which is defined as the change in LTVs over time.[25] The analogous multifamily measure is current debt-service-coverage ratio (DCR).

For single family loans, the stress test updates the original LTV to the start of the stress period, using the amortized loan balance and a house price growth factor for the period between origination and the start of the stress period. The house price growth factor is derived from OFHEO's House Price Index (HPI) for the Census Division in which the property is located. The stress test then applies the pattern of house price changes from the benchmark time and place to compute changes in property values during the stress period. The HPI values represent average property value appreciation. In simulating mortgage performance, the stress test also captures variations from average house price movements, called dispersion. For this purpose, the stress test uses dispersion parameters for the Census Division containing most benchmark states, which OFHEO published along with the HPI for the third quarter, 1996.

[25] 12 U.S.C. 4611(d)(1).

Multifamily property values are not updated in the stress test. LTV at loan origination is the only variable that measures property values directly in the multifamily model. If the original LTV is unknown, LTV at loan acquisition is substituted. The effect of seasoning on multifamily loans is captured by projecting changes in property income during the stress period, based upon rent and vacancy indexes consistent with the benchmark time and place.

When the ten-year CMT increases by more than 50 percent over the average yield during the nine months preceding the stress period, the stress test takes general price inflation into consideration. In such a circumstance, adjustments are made to the house price and rent growth paths during the stress period that correspond to the difference between the ten-year CMT and the level reflecting a 50 percent increase in the ten-year CMT. The stress test phases in this increase in equal monthly increments during the last five years of the stress period.

D. Mortgage Performance

To simulate mortgage performance during the adverse conditions of the stress period, the stress test uses statistical models that project default, prepayment and loss severity rates during the stress period. These models simulate the interaction of the patterns of house prices, residential rents, and vacancy rates from the benchmark time and place with stress test interest rates and mortgage risk characteristics, to predict the performance of Enterprise loans throughout the stress test. The default and prepayment models calculate the proportion of the outstanding principal balance for each loan group that defaults or prepays in each of the 120 months of the stress period. As described below in further detail, the models are based on the historical relationship of economic conditions, mortgage risk factors, and mortgage performance, as reflected in the historical experience of the Enterprises.

1. Single Family Default and Prepayment

The single family mortgage performance models were estimated using available historical data for the performance of Enterprise loans in the years 1979–1999. To simulate defaults and prepayments, the stress test uses a 30-year fixed-rate loan model, an adjustable-rate loan (ARM) model, and a third model for other products, such as 15-year loans and balloon loans. Each of the three single family models was separately estimated based on data for the relevant product types[26] and includes a calibration adjustment by LTV category, so that the results properly reflect a reasonable relationship to the benchmark loss experience, as described earlier.

All three single family models simulate defaults and prepayments based on the projected interest rates and property values, as described above, and variables capturing the mortgage risk characteristics described below. Certain variables are used only in prepayment equations. The single family default and prepayment variables are listed in Table 1.

TABLE 1.—SINGLE FAMILY DEFAULT & PREPAYMENT VARIABLES

Variables for All Single Family Models	Single Family Default Variables	Single Family Prepayment Variables
Mortgage Age	X	X
Original LTV	X	X
Probability of Negative Equity	X	X
Burnout	X	X
Occupancy Status	X	X
Relative Spread	....	X
Yield Curve Slope	....	X
Relative Loan Size	....	X
Product Type (ARMs, Other Products only)	X	X
Payment Shock (ARMs only)	X	X
Initial Rate Effect (ARMs only)	X	X

• Mortgage Age—Patterns of mortgage default and prepayment have characteristic age profiles; defaults and prepayments increase during the first years following loan origination, with a peak between the fourth and seventh years.

• Original LTV—The LTV at the time of mortgage origination serves as a proxy for factors relating to the financial status of a borrower, which reflects the

[26] Historical data sets for the ARM and other single family product models were pooled with data for 30-year fixed-rate loans to capture performance differences specific to product types relative to 30-year fixed-rate loans.

borrower's future ability to make loan payments. Higher original LTVs, which generally reflect fewer economic resources and greater financial risk, increase the probability of default and lower the probability of prepayment. The reverse is true for lower original LTVs.

• Probability of Negative Equity—Borrowers whose current loan balance is higher than the current value of their mortgaged property (reflecting negative borrower equity) are more likely to default than those with positive equity in their properties. The probability of negative borrower equity within a loan group is a function of (1) house price changes (based on the HPI), and amortization of loan principal, which together establish the average current LTV, and (2) the dispersion of actual house prices around the HPI value. Thus, even when the average current LTV for a loan group is less than one (positive equity), some percentage of the loans will have LTVs greater than one (negative equity).

• Burnout—This variable reflects whether a borrower has passed up earlier opportunities to refinance at favorable interest rates during the previous eight quarters. Such a borrower is less likely to prepay the current loan and refinance, and more likely to default in the future.

• Occupancy Status—This variable reflects the higher probability of default by investor-owners compared with that of owner-occupants. The RBC Report specifies the proportion of investor loans for each loan group.

• Relative Spread—The stress test uses the relative spread between the interest rate on a loan and the current market rate on loans as a proxy for the mortgage premium value, which reflects the value to a borrower of the option to prepay and refinance.

• Yield Curve Slope—This variable measures the relationship between short and long term interest rates. The shape of the yield curve, which reflects expectations for the future levels of interest rates, influences a borrower's decision to prepay a mortgage.

• Relative Loan Size—This variable reflects whether a loan is significantly larger or smaller than the State average. Generally, lower balance loans are less likely to refinance (and therefore prepay) because refinancing costs are proportionately larger, and the interest savings are proportionately smaller, than a larger balance loan.

• Product Type—The differences in performance between 30-year fixed-rate loans and other products, such as ARM and balloon loans, are captured by this variable.

• Payment Shock—This variable captures the effect of increasing or decreasing interest rates on the payments for ARMs. Although a borrower with an ARM loan may still have positive equity in the mortgaged property, the borrower may be unable to make a larger monthly payment when interest rates increase, resulting in increases to ARM default and prepayment rates. Conversely, decreasing interest rates make it easier for borrowers to make monthly payments, resulting in lower ARM default and prepayment rates.

• Initial Rate Effect—Borrowers with ARM loans with a ''teaser rate'' (an initial interest rate lower than the market rate) may experience payment shock even if market rates do not rise, as the low teaser rate adjusts to the market rate over the first few years of the loan. The stress test includes a variable which captures this effect in the first three years of the life of the loan.

2. Multifamily Default and Prepayment

The stress test uses a statistical model for multifamily default and a set of simple rules for multifamily prepayment. The default model was estimated using historical data through 1999 on the performance of Enterprise multifamily loans. As with the models of single family mortgage performance, the multifamily default model simulates the probability of default based on stress test conditions and loan group risk characteristics. To account for specific risks associated with multifamily loans, these loans are grouped somewhat differently than are single family loans and have somewhat different explanatory variables, to characterize stress test conditions. To characterize stress test conditions, the multifamily model specifies interest rates, rent growth rates, and vacancy rates.

The following variables are factors in determining the probability of default for multifamily loan groups:

• Mortgage Age—As with single family loans, the risk of default on multifamily loans varies over their lives.

• New Book Flags—These variables capture the performance differences between the Enterprises' original multifamily programs and their current, restructured programs. The reduced default risk under the ''new book of business'' is more pronounced for fixed rate loans than for balloon loans and ARMs, which are flagged separately.

• Current DCR and Underwater DCR Flag—Rental property owners tend not to default unless a property's debt coverage ratio (DCR) is less than one, indicating insufficient net cash flow to service the mortgage debt. The stress test updates the DCR of multifamily loans during the stress period using rent and vacancy indexes consistent with the benchmark loss experience. The higher the DCR, the less likely that the borrower will default. Conversely, a DCR below one indicates that the borrower cannot cover the mortgage payment, significantly increasing the risk of default.

• Original LTV—As with single family loans, the risk of default for multifamily loan borrowers is greater for higher original LTV loans than for lower original LTV loans.

• Balloon Maturity Risk—When a balloon mortgage matures, the borrower is required to pay off the outstanding balance in a lump sum. This variable captures the greater risk of default in the year before a balloon mortgage matures.

• Ratio Update Flag—This variable captures the decreased probability of default if the DCR and LTV were either calculated at loan origination, or recalculated at Enterprise acquisition, in accordance with current Enterprise standards.

To project prepayment rates for multifamily loans, the stress test implements a simple set of prepayment rules. In the up-rate scenario, multifamily loans do not prepay. In the down-rate scenario, two percent of multifamily loan balances prepay each year if they are inside the prepayment penalty time period. Outside the prepayment penalty period, multifamily loans prepay at an annual rate of 25 percent.

3. Loss Severity

Loss severity is the net cost to an Enterprise of a loan default. The stress test uses the costs associated with different events following the default of a mortgage to determine the total loss or cost to an Enterprise. Loss severity rates are computed as of the date of default, and are expressed as a percentage of the unpaid principal balance (UPB) of a defaulting loan.

In general, losses are composed of three elements associated with loan foreclosure and disposition (sale) of the property: loss of principal, transactions costs, and funding costs. Transaction costs include expenses related to foreclosure, property holding costs (real estate owned or REO costs) and disposition costs. For single family loans, transactions costs are fixed percentages based on historical averages computed from Enterprise data. For multifamily loans, transactions costs are based on the average costs through 1995 from Freddie Mac old book loans (*See* Footnote 24).

Loss of principal is the amount of defaulting loan UPB, offset by the net proceeds of the sale (disposition) of the foreclosed property. For single family loans, sale proceeds of foreclosed properties are a fixed percentage of defaulting UPB, based on benchmark recovery rates for real estate owned as a result of loan defaults (REO).[27] For multifamily loans, sale proceeds are a fixed percentage of the defaulting UPB, based on REO recovery rates from Freddie Mac old book loans through 1995.

Since foreclosure, property holding, disposition and associated costs occur over time, the stress test calculates loss severity rates by discounting the different elements of loss back to the time of default, based on stress period interest rates. This discounting also captures losses associated with funding costs, including passthrough interest on sold loans, at appropriate interest rates. For single family loans, the timing of each element is based on averages for the benchmark loans; for multifamily loans it is based on the average for Freddie Mac Old Book loans, using REO data through 1995. The loss severity rates are used in the cash flow components of the stress test to calculate credit losses for the Enterprises.

E. Other Credit Factors

1. Mortgage Credit Enhancements

A portion of Enterprise mortgage losses are offset by some form of credit enhancement. Credit enhancements are contractual arrangements with third parties that reduce Enterprise losses on defaulted loans. By including the effect of mortgage credit enhancements, the stress test more realistically reflects Enterprise risks related to mortgage defaults and credit losses during the stress period.

The stress test captures many types of credit enhancements, with differing depths and methods of coverage, for both single family and multifamily loans. The stress test divides mortgage credit enhancements into two categories—loan limit and aggregate limit. Loan limit credit enhancements cover a specified percentage of losses on individual loans with no limit on the aggregate amount paid under the contract. This category includes mortgage insurance for single family loans and loss-sharing agreements for multifamily loans. Aggregate limit credit enhancements cover losses on a specified set of loans, up to a specified aggregate amount. This category includes limited and unlimited recourse to seller/servicers, indemnification, pool insurance and modified pool insurance, cash or collateral accounts, third-party letters of credit, spread accounts, subordination agreements, and FHA risk-sharing.

The amount by which credit enhancements reduce monthly loss severity rates is based on information reported by the Enterprises in the RBC Report for the level of coverage for both loan limit and aggregate limit credit enhancements for each loan group. The stress test applies loan limit credit enhancements first. Then aggregate limit credit enhancements are applied to the remainder of the loss balance, up to the contractual limit. The stress test reduces the loss severity rate for a specific loan group based on the combined loan limit and aggregate limit credit enhancements associated with loans in that group.

2. Counterparty Default

In addition to mortgage credit quality, the stress test considers the creditworthiness of companies and financial instruments to which the Enterprises have credit exposure. These include most mortgage credit enhancement counterparties, securities held as assets, and derivative contract counterparties.

For these contract or instrument counterparties, the stress test reduces—or applies ''haircuts'' to—the amounts due from these instruments or counterparties according to their level of risk. The level of risk is determined by public credit ratings at the start of the stress test, classified into five categories: AAA, AA, A, BBB and unrated/below BBB. When no rating is available or the instrument or counterparty has a rating below BBB (below investment grade), the stress test applies a 100 percent haircut in the first month of the stress test, with the exception of unrated seller/servicers, which are treated as BBB, and unrated, unsubordinated obligations of government sponsored enterprises, which are treated as AAA. For other categories, the stress test phases in the haircuts monthly in equal increments until the total reduction listed in Table 2 is reached five years into the stress period. For the remainder of the stress period the haircut applies.

TABLE 2.—STRESS TEST FINAL HAIRCUTS BY CREDIT RATING CATEGORY

Ratings Classification	Derivative	Non-derivative
AAA	2%	5%
AA	4%	15%
A	8%	20%
BBB	16%	40%
Unrated/Below BBB [1]	100%	100%

[1] Unrated, unsubordinated obligations issued by government sponsored enterprises other than the reporting Enterprise are treated as AAA. Unrated seller/servicers are treated as BBB. Other unrated counterparties and securities are subject to a 100% haircut applied in the first month of the stress test, unless OFHEO specifies another treatment, on a showing by an Enterprise that a different treatment is warranted.

Because the stress test does not model currency exchange rates through the stress period, the stress test reflects the associated risk by modeling the debt and the swap as a single debt transaction that pays the dollar-denominated net interest rate paid by the Enterprise, and no haircut is applied.

F. Cash Flows

For each month of the stress period, the stress test calculates cash flows for every loan group and individual instrument reported in the RBC Report and applies the haircuts to cash flows to reflect the credit risk of securities and counterparties. These cash flows are used to create pro forma financial statements that reflect an Enterprise's total capital in each month of the stress period.

1. Mortgage Cash Flows

The cash flow component of the stress test applies projected default, prepayment, and loss severity rates net of credit enhancements to amortized loan group balances to produce mortgage cash flows for each month of the stress period. Cash flows are generated for each single family and multifamily loan group. For retained loan groups, cash flows consist of scheduled principal, prepaid principal, defaulted principal, credit losses, and interest. For sold loans, cash flows consist of credit losses, guarantee fee income, and float income.

2. Mortgage-Related Security Cash Flows

Because losses on sold loans are absorbed by the Enterprises directly and are not passed through to security holders, no additional credit losses are

[27] Recovery rate is the proportion of defaulted UPB that is recovered through the sale of the property.

reflected in cash flows calculated for an Enterprise's own mortgage-backed securities (MBSs) held as investments. Cash flows for single-class MBSs issued by an Enterprise and held as investments consist only of principal and interest payments. Cash flows for mortgage securities not issued by the Enterprise consist of principal and interest payments and credit losses based on haircuts according to rating level. Principal payments are calculated by applying default and prepayment rates that are appropriate for the loans underlying the MBS. The stress test specifies that defaulted and prepaid principal and scheduled amortization are passed through to investors. Interest is computed by multiplying the security principal balance by the coupon rate.

Multiclass mortgage securities such as Real Estate Mortgage Investment Conduit securities (REMICs) and stripped MBS (strips) are treated in the same manner as single class MBS. The stress test generates cash flows for the underlying collateral, usually single-class MBSs, and applies the cash flow allocation rules of the particular multiclass security to determine cash flows of the specific class(es) held by an Enterprise. In generating cash flows for mortgage-linked derivative contracts, where the notional amount of the contract is based on the declining principal balance of a specified MBS, the stress test applies the terms of each contract and tracks the appropriate changing balances. The stress test generates cash flows for mortgage revenue bonds by treating each bond as a single-class MBS backed by 30-year, fixed-rate single family mortgages maturing on the bond's stated maturity date.

3. Nonmortgage Instrument Cash Flows

The stress test calculates cash flows for securities that the Enterprises hold as assets, or have issued as liabilities. The stress test also generates cash flows for derivative instruments such as interest rate swaps, caps, and floors. For nonmortgage investments, outstanding debt securities, and liability-linked derivative contracts, payments of principal and interest are calculated for each instrument based on contractual terms and stress test interest rates. For fixed-rate asset-backed securities, the stress test applies a 3.5 percent collateral prepayment speed; for floating-rate securities a two percent speed is applied in both interest rate scenarios.

For each month during the stress period that a security is subject to early redemption (put/call), the stress test calculates the effective remaining yield-to-maturity [28] of that instrument and compares it to the yield of a replacement security, under the given stress period interest rate scenario. If the yield on the replacement instrument is more than 50 basis points below the cost of the existing instrument, the call or cancellation option is exercised. The stress test applies a similar rule to derivative contracts that are subject to cancellation.

G. New Products or Activities

Given the continuing evolution and innovation in the financial markets, OFHEO recognizes that the Enterprises will continue to develop and purchase new products and instruments and engage in other new activities. To the extent that the current stress test treatments are not applicable directly, OFHEO will combine and adapt current stress test treatments in an appropriate manner in order to ensure that the risks of these activities are adequately captured in the risk-based capital requirement. For example, OFHEO might employ the mortgage performance models and adapt its cash flow components to simulate accurately the loss mitigating effects of credit derivatives. Where there is no reasonable approach using existing combinations or adaptations, the stress test will employ an appropriately conservative treatment, consistent with OFHEO's role as a safety and soundness regulator. Similarly, the Director has discretion to treat an existing instrument as a new activity if OFHEO determines there have been significant increases in volume that change the potential magnitude of the risk of the instrument, or where other information indicates that the risk characteristics of the instrument are not appropriately reflected in a treatment previously applied.

An Enterprise that has a new activity is encouraged to suggest a treatment which will be considered by OFHEO. The Enterprise will also be able to comment on OFHEO's treatment before it is used for a final capital classification. The public will have a subsequent opportunity to submit views on these treatments, which will be considered for future stress test applications.

H. Other Off-Balance-Sheet Guarantees

In addition to guaranteeing mortgage-backed securities they issue as part of their main business, the Enterprises occasionally provide guarantees for other mortgage-related securities to enhance the liquidity and appeal of these securities in the marketplace. These securities, notably single family and multifamily whole-loan REMIC [29] securities and tax-exempt multifamily housing bonds, represent a small part of the Enterprises' businesses and have a significant level of credit enhancement that protects the Enterprises from losses. Consequently, the stress test does not explicitly model the performance of these securities, but uses an alternative modeling treatment. As a proxy for the present value of net losses on these guarantees during the stress period, the outstanding balance of these instruments at the beginning of the stress period is multiplied by 45 basis points. The resulting amount is subtracted from the lowest discounted monthly capital balance for the calculation of stress test capital, as described below in II.K., Calculation of the Risk-based Capital Requirement.

I. Alternative Modeling Treatments

The stress test also assigns alternative modeling treatments to any items for which data are incomplete, and any on- or off-balance sheet items for which there is neither a specified treatment in the final regulation nor a computationally equivalent proxy. An alternative modeling treatment is a series of rules that assigns simple, appropriately conservative assumptions, based on the interest rate scenario, to an asset, liability, or off-balance-sheet item in the stress test. Missing data elements are assigned a conservative default value. This treatment will only be needed for extremely unusual items or when all the necessary data for modeling an instrument are not included in the RBC Report.

J. Enterprise Operations, Taxes and Accounting

The stress test simulates the issuance of new debt or purchase of new investments, exercise of options to retire debt early or cancel derivative contracts, payment of dividends by the Enterprises, operating expenses, and income taxes. The stress test computes Federal income taxes using an effective tax rate of 30 percent. Estimated income tax is paid by the Enterprises quarterly in the stress test.

When necessary, the stress test simulates the issuance of new debt or

[28] Yields are calculated based on the outstanding principal balances for securities and notional amounts for derivative contracts.

[29] Real Estate Mortgage Investment Conduit (REMIC) securities are multiclass mortgage passthrough securities. The classes of a REMIC security can take on a wide variety of attributes with regard to payment of principal and interest, cashflow timing, (un)certainty and maturity, among others.

purchase of new investments by an Enterprise. A mix of short- and long-term debt is issued in months when there is a shortfall of cash. New short-term debt is six-month discount notes at the simulated Enterprise Cost of Funds. New long-term debt is five-year debt, callable after the first year, at the five-year Enterprise Cost of Funds, plus a 50 basis-point premium for the call option. Short- and long-term debt issuance is targeted to achieve and maintain a total liability mix of 50 percent short-term debt and 50 percent long-term debt. Excess cash is invested in one-month securities bearing the six-month Treasury rate.

Capital distributions are made during the stress period. If an Enterprise's core capital [30] exceeds the minimum capital requirement in any quarter, dividends on preferred stock are paid based on the coupon rates of the issues outstanding. Common stock dividends are paid only in the first four quarters of the stress period. The amount paid is directly related to the earnings trend of the Enterprise. Generally, if the trend is positive, the dividend payout ratio is the same as the average of the four quarters preceding the stress test. Otherwise, dividends are based on the dollar amount per share paid in the last quarter preceding the stress test. Share repurchases are made in the first two quarters of the stress period, based on the average stock repurchase for the four quarters preceding the stress test. No capital distribution is made if core capital is below the minimum capital requirement. If a capital distribution would cause core capital to fall below the minimum capital requirement, the distribution is made only to the extent of the core capital that exceeds the minimum capital requirement.

Operating expenses decline during the stress test as the Enterprise's mortgage portfolios decline, but the decline is not strictly proportional. The baseline level from which they decline is the average monthly operating expenses of the Enterprise for the three months preceding the start of the stress test. In each month of the stress test, the amount of the decline is determined by computing a base amount comprised of a fixed component and a variable component. The fixed component is one third of the baseline level, and the variable component begins as the remaining two thirds of the baseline level and declines in direct proportion to the decline in the UPB of the combined portfolios of retained and sold loans during the stress period. The base amount is further reduced by one-third, except that this further reduction is gradually phased in during the first 12 months of the stress test.

To the extent possible, the stress test makes use of Generally Accepted Accounting Principles (GAAP). However, the stress test does not reflect certain securities and derivatives at their fair value, as required by the Financial Accounting Standards Board's Statement of Financial Accounting Standard (FAS) Nos. 115 and 133. In the first month of the stress test, these assets are adjusted to an amortized cost basis.

K. Calculation of the Risk-Based Capital Requirement

The stress test determines the amount of capital that an Enterprise must hold at the start date in order to maintain positive capital throughout the ten-year stress period (stress test capital). Once stress test capital has been calculated, an additional 30 percent is added to protect against management and operations risk. This total is the risk-based capital requirement.

In order to calculate stress test capital, the capital balance for each month is discounted back to the start of the stress period, using capital as calculated in the pro forma financial statements and interest rates for both stress test scenarios. The stress test uses the six-month Treasury rate when the Enterprise is a net lender and the six-month Enterprise Cost of Funds when the Enterprise is a net borrower. The lowest discounted monthly capital balance is then decreased as described above to account for certain items given alternative modeling treatments, including the other off-balance-sheet obligations described above in II.H., Other Off-Balance-Sheet Guarantees. This lowest discounted monthly balance, if positive, represents a surplus of initial capital, that is, capital that was not ''used'' during the stress period. If negative, it represents a deficit of initial capital. The lowest discounted monthly balance is then subtracted from the Enterprise's initial capital. The resulting amount is the smallest amount of starting capital required to maintain positive capital throughout the stress period.

For example, if an Enterprise holds starting capital of $10 billion and the lowest discounted monthly balance is $1 billion (representing a positive capital balance in the worst month of the stress period), then the amount of starting capital necessary to maintain positive capital throughout the stress period is $9.0 billion. If, on the other hand, the lowest discounted monthly balance is −$1 billion (representing a negative capital balance in the worst month), the necessary starting capital to maintain positive capital throughout the stress period is $11.0 billion.

Finally, required starting capital is multiplied by 1.3 to complete the calculation of the risk-based capital requirement required by the 1992 Act.

III. Comments and Responses

The final rule reflects OFHEO's consideration of all the comments on NPR1 and NPR2, including responses from those commenters who replied to the initial comments on NPR2. After careful review and analysis of the comments, OFHEO determined that a number of recommendations had merit. OFHEO accepted these recommendations and made changes in the stress test accordingly. In other cases where commenters recommended changes, OFHEO did not accept the specific suggestion, but modified the stress test to address the commenters' concerns. Other recommendations proved to be contrary to the 1992 Act, did not offer a better alternative to the existing stress test, or had merit but required further study before they could be implemented.

The commenters on NPR1 and NPR2 included the Enterprises, financial services and housing-related trade associations, financial service companies, affordable housing groups and agencies, a governmental agency, a private rating agency and several individuals.

Trade associations commenting included American Bankers Association (ABA), America's Community Bankers (ACB), Consumer Mortgage Coalition (CMC), Mortgage Bankers Association of America (MBA), Mortgage Insurance Companies of America (MICA), National Association of Home Builders (NAHB), National Association of Realtors (NAR), Credit Union National Association (CUNA), National Bankers Association (NBA), National Association of Real Estate Brokers (NAREB), and National Home Equity Mortgage Association (NHEMA).

Financial services companies commenting included GE Capital Mortgage Corporation (GE Capital), Chase Manhattan Mortgage Corporation, Charter One Bank, Goldman Sachs, Newport Mortgage Company L.P., J.P. Morgan & Co. Incorporated, Bear Stearns & Co. Inc., Morgan Stanley Dean Witter (Morgan Stanley), Lehman Brothers, Salomon Smith Barney, Triad Guaranty Insurance Corporation, Merrill Lynch, Promentory Financial Group LLC, PW

[30] Core capital, as defined at 12 U.S.C. 4502(4) consists of par value or stated value of outstanding common, and perpetual, noncumulative, preferred stock, paid-in capital, and retained earnings, determined in accordance with Generally Accepted Accounting Principles.

Funding Inc., Amresco Capital, L.P., Golden West Financial Corporation (World Savings), Countrywide (Mid-America Bank FSB), American International Group Inc. (AIG), the Federal Home Loan Bank of Chicago, and WMF Group.

Affordable housing groups and agencies included The Enterprise Foundation and the Local Initiatives Support Corporation, National Center for Community Self Help, National Council of State Housing Agencies (NCSHA), Association of Local Housing Finance Agencies, Nebraska Investment Finance Authority, Neighborhood Housing Services of America, Inc., National Association of Affordable Housing Lenders (NAAHL), PT & Associates Community Development Consulting, National Neighborhood Housing Network, National Community Reinvestment Coalition, and Coalition on Homelessness & Housing in Ohio.

Other commenters included Office of Thrift Supervision, Fitch ICBA, Nelson Yu, O'Melveny & Myers LLP, and L. William Seidman.

A summary of the comments and OFHEO's responses are set forth below, by topic.

A. Approach

Commenters generally agreed on the basic premises underlying OFHEO's proposal to implement a risk-based capital requirement for the Enterprises: the importance to the nation's housing finance system of financially strong Enterprises, and the appropriateness of the weight the 1992 Act places on a risk-based capital requirement to protect the Enterprises' capital adequacy. The views of commenters, however, diverged on the question of whether a stress test, such as the one proposed in NPR2, provided the best approach to setting a risk-based capital requirement for the Enterprises. Among the commenters who agreed that a stress test was the best approach, the views diverged on the question of how the stress test should be implemented. The general comments on OFHEO's approach are discussed below by topic.

1. Bank and Thrift Approach

a. Comments

Some commenters suggested that OFHEO take an overall approach to capital regulation similar to that emerging among the bank and thrift regulators and the Basel Committee on Banking Supervision. The suggestions of these commenters included using ratios to set capital requirements for credit risk and Value at Risk (VaR) methodologies for market risk rather than a stress test. One Enterprise and one commenter, however, noted that although VaR methodology is a valuable analytical tool, it is not appropriate for determining risk-based capital as prescribed by the 1992 Act.

The approach evolving in the bank regulatory community applies ratios to categories of on- and off-balance-sheet items to derive capital requirements, but also begins to incorporate VaR and other methodologies that financial institutions employ in their proprietary models. The approach, which is outlined in the June 1999 report by the Basel Committee on Banking Supervision (Committee) titled "A New Capital Adequacy Framework," also puts more emphasis on supervisory review and greater market discipline based on expanded disclosure of risk. The June 1999 report discusses a new capital framework consisting of three "pillars": minimum capital requirements, a supervisory review process, and market discipline.

The three pillars approach to bank regulatory capital seeks to improve the relationship of bank capital requirements to risk that was set out in the 1988 Accord. The 1988 Accord was itself a major departure from the simple leverage ratios applied by regulators to total assets. It introduced a capital framework that applied ratios to broad categories of assets according to their relative riskiness as reflected by type of instrument (e.g., residential mortgages, commercial loans, or lines of credit) or by obligor (e.g., sovereign government, national bank, or industrial company). At the time the Accord was introduced, the Committee recognized the limitations inherent in quantifying credit risk by applying ratios to such broad categories of assets. The Committee also recognized that credit risk was only one element of the risk profile of a financial institution. Subsequent enhancements, most notably permitting the use of proprietary models to calculate a supplemental capital requirement reflecting the market risk of a large financial institution's trading portfolio, have continued to improve the process of quantifying risk and calculating an appropriate level of capital based on risk.

In January of 2001, the Committee published for comment a proposal embodying the three pillars to replace the 1988 Accord.[31] The proposal is intended to be a more risk-sensitive framework containing a range of new options for measuring both credit and operational risk. Key elements of the proposal were a refinement of the minimum capital requirement to make it more risk-sensitive, a greater emphasis on the bank's own assessment of its risk, and a decision to treat interest rate risk under the second pillar, the supervisory review process.The proposal described a "foundation" or standardized approach to credit risk, which was a refinement of the 1988 approach to minimum capital, and an "advanced" internal ratings-based approach for banks that meet more rigorous supervisory standards. The latter made use of internal estimates, subject to supervisory review, but stopped short of permitting banks to calculate their capital requirements on the basis of their own portfolio credit risk models. Separate disclosure requirements were set forth as prerequisites for supervisory recognition of internal methodologies for credit risk, credit risk mitigation techniques, and asset securitization. The Committee indicated that similar disclosure prerequisites would attach to the use of advanced approaches to operational risk.

After reviewing the comments on the January 2001 proposal, the Committee announced in June of 2001 that the proposal needs further adjustment to maintain equivalency between the two approaches and to ensure that the capital incentives are appropriate to encourage banks to adopt the more advanced approaches.[32] The Committee reaffirmed its support for the three pillars approach and announced that it would release a complete and fully specified proposal for an additional round of consultation in early 2002, with a target implementation date of 2005.

b. OFHEO's Response

Although the 1992 Act requires a risk-based capital standard for the Enterprises that is based on a stress test, OFHEO's overall approach to regulation is broadly parallel to the three pillars approach proposed by the Committee. OFHEO already pursues a "multidimensional" approach to regulating the Enterprises' capital, as one commenter urged. OFHEO's minimum and risk-based capital requirements are quantifiable capital requirements, which are the goals of the Committee's first pillar; OFHEO employs risk-based examination and

[31] Committee on Banking Supervision, "Overview of the New Basel Capital Accord," Bank for International Settlements, Basel, Switzerland (January 2001). A copy of this document can be obtained from the BIS website at *http://www.bis.org.*

[32] See press release of June 25, 2001, "Update of the New Basel Accord." A copy of this document may be obtained on the BIS website at *http://www.bis.org.*

oversight of the Enterprises that provides the type of oversight contemplated in the second pillar; and OFHEO is currently reviewing the Enterprises' public disclosures to determine whether they would provide an adequate basis for market discipline as contemplated in the third pillar.

Although OFHEO will follow with interest the Committee's progress in developing a new regulatory capital framework and, where appropriate, consider incorporating aspects of this new framework into its regulation of the Enterprises, OFHEO believes that its stress test is appropriate to implement the statutory requirements and ties capital more closely to risk than either the current Basel Accord or recent proposals. The current capital adequacy regime for large banks quantifies credit risk by applying ratios to risk-weighted asset and off-balance-sheet amounts and quantifies market risk only to the extent of the interest rate risk in the banks' trading portfolios. In refining the treatment of credit risk, the Committee's three pillars approach would continue to rely on ratios. Interest rate risk would be addressed under the second pillar, the supervisory review process. By contrast, OFHEO's stress test simultaneously captures credit risk and interest rate risk of an Enterprise's entire business.

OFHEO also believes that VaR methodologies that large banks use to evaluate the interest rate risk of their trading portfolios are not adequate to implement the requirements of the 1992 Act. VaR approaches are best used to evaluate risk over relatively short time periods and are, therefore, appropriate for evaluating trading portfolios. The Enterprises' asset portfolios, however, are not a "trading book," as one commenter suggested. Rather, these portfolios are comprised largely of assets that are held to maturity. The Enterprises' actual trading portfolios are, in fact, a small part of the Enterprises' balance sheets. Further, although large banks continue to use VaR models for calculating day-to-day trading risk, since the disruptions in the global financial markets in 1997 and 1998, these banks increasingly have employed stress tests to measure their market exposure.[33] These banks found that VaR models were less able to measure risk under extreme market conditions than stress tests.

2. Proprietary/Internal Models

a. Comments

Some of the commenters who recommended the bank and thrift regulatory approach urged that OFHEO permit the Enterprises to use their proprietary models to determine interest rate risk. A number of other commenters contended that each Enterprise should calculate its own risk-based capital requirement using a stress test model specified by OFHEO but developed by the Enterprise. Each Enterprise would then report its risk-based capital requirement to OFHEO in the same manner as the minimum capital requirement is reported. All of these commenters suggested that OFHEO could ensure the integrity of the capital calculation process through its examination function. In arguing for the use of internal models, one commenter also noted that the risk-based capital proposals of the Farm Credit Administration (FCA) and the Federal Housing Finance Board (FHFB) also permit the use of proprietary and/or internal models to varying degrees.

Both Enterprises agreed that they should calculate their own risk-based capital requirement, contending that it is sufficient for OFHEO to publish the specifications for the model. They recommended that they should run the stress test as specified by OFHEO on their own internal systems, at least as a transitional measure. The Enterprises believe this would be the fastest and most efficient way to implement a risk-based capital rule that would produce capital numbers in a timely way.

Other commenters believed that allowing an Enterprise to calculate its own capital requirement using its proprietary models or a model that OFHEO specifies would undermine OFHEO's regulatory independence and impede the transparency of the stress test for third parties. These commenters felt that OFHEO must retain control of both the model and the process for determining the Enterprises' risk-based capital requirements to ensure the integrity of the calculation of risk-based capital.

The Congress has required FCA, which regulates the Federal Agricultural Mortgage Corporation (Farmer Mac), and FHFB, which regulates the Federal Home Loan Banks, to establish risk-based capital standards for the entities they regulate. The statutory requirements for FCA's risk-based capital regulation,[34] which parallel the requirements of the 1992 Act, include a ten-year stress test, a worse-case historical credit loss experience, and stressful interest rate scenarios. The FCA rule specifies the basic structure and parameters of the risk-based capital stress test and allows Farmer Mac to use FCA's spread sheet model or implement the stress test using an internal model built to FCA's specifications to determine its risk-based capital requirement.[35]

The statutory requirements for FHFB's recently adopted capital regulation,[36] which takes an approach similar to that of the bank and thrift regulators, are much less specific than either OFHEO's or FCA's, but direct FHFB to take OFHEO's stress test into consideration. In the FHFB rule, each Federal Home Loan Bank calculates its own risk-based capital charge.[37]

b. OFHEO's Response

The final rule continues to provide for capital classifications to be determined based on a stress test specified, developed, and administered by OFHEO. OFHEO believes this approach best fulfills the statutory purposes and maintains the integrity of the risk-based capital regulation. Allowing the Enterprises to use their proprietary models or models they develop based

[33] Committee on the Global Financial System, "Stress Testing by Large Financial Institutions: Current Practice and Aggregation Issues," 14 Bank for International Settlements, Basel, Switzerland (April 8, 2000). A copy of this document may be obtained from the BIS website at *http://www.bis.org.*

[34] 66 FR 19048, April 12, 2001. FCA's rule determines stressful credit conditions by applying loss frequency and severity equations to Farmer Mac's loan-level data. From these equations, FCA's test calculates loan losses, assuming Farmer Mac's portfolio remains at a "steady state," and allocates the calculated losses to each of the ten years. Interest rate risk is quantified using the results of Farmer Mac's interest rate risk shock-test to determine the change in the market value of equity (MVE). The change in MVE is posted to the first period in the stress test.

[35] In its notice of proposed rulemaking, FCA noted "that because of the proprietary nature of specific, transaction loan level and financial data used in the risk-based capital stress test, it is unlikely that results of the test will be fully reproducible by parties other than Farmer Mac and us. Other parties, however, will be able to approximate the test results on an aggregate basis using publicly available information." 64 FR 61741, November 12, 1999.

[36] 12 FR 8262, Jan. 30, 2001; 12 CFR parts 915, 917, 925, 930, 931, 932, 933, 956, and 960.

[37] Capital to cover credit risk is calculated from leverage ratios that are based upon the credit ratings of counterparties and collateral supporting the credit. 66 FR 8313 (Jan. 30, 2001). Market risk capital is based on internal VaR models or stress tests and a determination of the amount by which the current market value of a Federal Home Loan Bank's total capital is less than 85 percent of the book value of total capital. *Id.* at 8317. Capital for operations risk is 30 percent of credit risk capital, although the FHFB may approve a lesser amount (not less than 10 percent) where the Federal Home Loan Bank obtains appropriate insurance or provides an acceptable alternative method for assessing and quantifying operations risk capital. *Id.* at 8318.

on OFHEO's specifications to calculate their own capital requirements could result in a weaker and inconsistently applied standard. However, each Enterprise will receive the source code for the stress test, which will enable it to compute its own capital requirement for internal purposes and to comment on its proposed capital classification.

Although FCA's statutory framework is similar to the 1992 Act, statutory interpretations that are appropriate for FCA's statute are not necessarily appropriate interpretations of the 1992 Act, and differences in regulatory responsibilities make the FCA approach unworkable for OFHEO. FCA is charged with developing a stress test for a single entity, while OFHEO regulates two entities, both of which must be subject to the same stress test.[38] Models that the Enterprises develop themselves would inevitably differ in their details, which could result in significant variations, and make it difficult to apply the stress test consistently to both Enterprises. In addition, the 1992 Act requires that the stress test be set forth in a regulation subject to notice and comment rulemaking,[39] that the risk-based capital regulation be sufficiently specific to permit someone other than the Director to apply the test,[40] and that OFHEO make the stress test model publicly available.[41] For these reasons, OFHEO concluded that the most practical way to comply with these statutory provisions was to develop and administer its own model on its own systems and apply the stress test even-handedly to both Enterprises.

Use of the FHFB approach is not viable for OFHEO under the 1992 Act, which requires a specific stress test, and does not provide the option of allowing each institution to design an appropriate risk-based capital test. The FHFB compared the agencies' approaches in the preamble to its final rule, noting that ''[f]or example, the GLB Act requires that the [FHFB] develop a stress test that rigorously tests for changes in interest rates, interest rate volatility and changes in the shape of the yield curve, while the statutory requirements governing Fannie Mae and Freddie Mac set forth specific scenarios for downward and upward shocks in interest rates.''[42] Other examples of statutory differences include the requirement in the 1992 Act that credit losses be related to the benchmark loss experience and an extensive list of factors that OFHEO must consider in designing the stress test. Further, the procedural requirements that the details of the stress test be published by regulation and made available to the public also make an internal models approach impractical for OFHEO.

OFHEO also finds that regulatory independence and rigor is best served by OFHEO's approach. The availability of the stress test on OFHEO's systems allows OFHEO greater flexibility to run the stress test whenever it may be needed. Maintaining the infrastructure to support the stress test also gives OFHEO the ability to independently test alternative risk scenarios in addition to the two stress test scenarios, which ensures the integrity of the stress test. This capability will also permit OFHEO to test possible improvements and adjustments to the stress test.

In sum, OFHEO concurs with the concerns of the commenters who recommended that OFHEO develop and maintain a single stress test model and require the Enterprises to provide the necessary data for the stress test. The Enterprises certainly may replicate that model from OFHEO's model specifications and computer code and use it to determine the capital impact of various business decisions. For the purposes of determining the capital classifications, however, OFHEO will run its own model using data submitted by the Enterprises. To alleviate some of the Enterprises' concern about the ability of the model to produce accurate capital numbers in a timely way, the final regulation establishes a standardized data reporting format for the RBC Report. This Report will enable OFHEO to produce capital numbers within the regulatory time frame. *See* sections III.B., Operational Workability of the Regulation and III.E., Enterprise Data.

3. Mark to Market for ''Tail Risk''

a. Comments

Two commenters said that OFHEO should consider losses beyond the end of the stress test period, either by marking to market remaining positions or otherwise requiring additional capital to cover the risk that remained at the end of the ten-year stress period. One Enterprise responded that marking to market to capture this ''tail risk'' would be contrary to the 1992 Act.

b. OFHEO's Response

The final regulation does not adopt the commenters' suggestions to require capital for on- and off-balance-sheet items that remain at the end of the ten-year stress period or to mark these items to their market value. The 1992 Act specifies that the stress period is ten years and that total capital must meet or exceed the amount of capital necessary to survive the stress period with positive capital. Marking to market balance sheet items that remain at the end of the 120 month period would bring into the stress test period earnings or losses beyond the ten-year period and would be inconsistent with the 1992 Act.

4. Additional Interest Rate Scenarios

a. Comments

Several commenters suggested that OFHEO study additional interest rate scenarios to ensure that smaller changes in interest rates do not result in risk-based capital requirements that are larger than the requirements generated by the interest rate scenarios in the 1992 Act. These commenters expressed concern that the risk-based capital rule will be inadequate unless OFHEO runs more than two interest rate scenarios. They also urged OFHEO to monitor any attempts by the Enterprises to take advantage of the limited number of interest rate scenarios in the stress test. The comment implies, for example, that an Enterprise could enter into inexpensive interest rate derivatives contracts that would allow the Enterprise to easily pass the two interest rate scenarios of the stress test. Under slightly different and possibly less stressful interest rate scenarios, these derivatives might be useless, but a stress test based on only two interest rate scenarios would not uncover this deficiency. To prevent this problem, the commenters said that OFHEO should run additional scenarios with a variety of assumptions, including combinations of smaller interest rate changes, more volatile interest rates, different yield curves, and alternative changes in house prices. They recommended that OFHEO set the risk-based capital requirement for an Enterprise at the highest amount generated by any additional scenarios. One Enterprise disagreed, saying that more moderate interest rate movements would probably result in lower capital requirements. The Enterprise also noted that OFHEO's examination process

[38] *See* 12 U.S.C. 4611(a) (''The Director shall, by regulation, establish *a* risk-based capital test for the Enterprises. When applied to an Enterprise, *the* risk-based capital test shall determine the amount of total capital for the Enterprise * * *'') (emphasis added). See also H.R. Rep. No. 102–206 at 62 (1991). ''Beyond these traditional capital ratios, the bill sets forth guidelines for the creation, in highly specific regulations, of a risk-based capital standard * * * *The* model, or stress test, will generate a number for each Enterprise, which will become the risk-based standard for that Enterprise.'') (emphasis added).

[39] 12 U.S.C. 4611(e)(1).

[40] 12 U.S.C. 4611(e)(2).

[41] 12 U.S.C. 4611(f).

[42] 66 FR at 8283.

ensures the integrity of Enterprises' risk management process.

b. OFHEO's Response

In response to these comments, OFHEO notes that the 1992 Act provides only two scenarios for the stress test and requires that risk-based capital be based on whichever of the two scenarios results in the higher capital requirement. Although OFHEO intends to run additional scenarios in order to monitor an Enterprise's capital adequacy, OFHEO does not need to modify the regulation to include scenarios beyond those specifically required in the 1992 Act. Moreover, it is not clear that specifying additional scenarios in the risk-based capital regulation would address the concerns of the commenters. If OFHEO were to add scenarios to the final rule, an Enterprise could simply enter into additional derivatives contracts that would hedge the new scenarios.

The 1992 Act specifies two interest rate scenarios, but it does not prohibit the running of additional scenarios as part of OFHEO's on-going monitoring of safety and soundness of the Enterprises. OFHEO can only test how well the results of the statutory scenarios reflect risk if OFHEO continues to run additional scenarios based on market conditions and other factors the Director considers appropriate. Should OFHEO discover any capital weakness when it runs additional scenarios, OFHEO has supervisory tools available to correct the situation. For example, if additional stress testing reveals that scenarios equally or less stressful than those in the 1992 Act would cause an Enterprise to fail the stress test, the Director may determine that grounds for discretionary capital reclassification exist under section 1364(b) of the 1992 Act. Similarly, a finding by the Director that an Enterprise is conducting itself in a way that threatens to cause a significant depletion of core capital would provide grounds for a cease and desist order.

B. Operational Workability of the Regulation

A broad theme of the comments was that OFHEO should move expeditiously to a final rule that is operationally workable. By operationally workable, most commenters meant that the regulation must provide for accurate and timely calculations of risk-based capital requirements. From a regulatory perspective, OFHEO agrees, because the risk-based capital requirement, together with the minimum capital requirement, serves as the basis for classifying the Enterprises as ''adequately capitalized'' or ''undercapitalized.'' OFHEO must determine these classifications as quickly as possible to minimize delays in identifying capital shortfalls. However, a number of commenters also expressed more specific concerns related to how the rule and the stress test that underlies it will operate in practice. These comments and OFHEO's responses to them are explained below.

1. Replicability and Transparency

To the Enterprises and some other commenters, the concept of operational workability meant that the stress test should be sufficiently transparent that the Enterprises can use it for internal planning and analysis. This level of transparency would allow the Enterprises to calculate capital numbers on their own systems with reasonable assurance that the results will closely mirror OFHEO's results. To certain non-Enterprise commenters, however, the concept of transparency meant complete replicability of OFHEO's results—that is, the ability of parties other than OFHEO and the Enterprises to run the stress test and to evaluate the potential impacts on Enterprise regulatory capital requirements of changes in the economy or Enterprise business mix. These commenters asserted that in order to promote market discipline, the stress test should be this transparent to third parties. They recommended that OFHEO release the computer code as well as the complete specifications of the stress test. A few commenters stated that the stress test could not be completely transparent without the release of Enterprise data, some of which may be proprietary.

OFHEO strongly supports a concept of operational workability that allows capital classifications to be determined in a timely manner, allows the Enterprises to use the stress test as a planning tool, is transparent to third parties, and allows capital classifications to be calculated in a timely manner. To this end, OFHEO, working with the Enterprises, has developed a standardized reporting format, the RBC Report, that will permit the reported data to be input into the stress test without manipulation and will work with the Enterprises to assist them in aligning their data systems with the reporting format so that they will be able to run the stress test on their systems and achieve the same result as the Director. This will permit timely classifications and will permit the Enterprises to anticipate what their capital classification will be. OFHEO's treatment of new activities, discussed below in III.B.3., New Enterprise Activities, is also designed to allow the Enterprises to understand the probable impact of new activities on their regulatory capital requirements. In addition, OFHEO will release to the Enterprises and other requesting parties a copy of the computer code. A stylized data set also will be made available to interested parties to permit them to understand the sensitivities and implications of the stress test.[43] This information will allow parties other than OFHEO to apply the stress test to any set of starting data in the same manner as OFHEO.

OFHEO disagrees, however, with commenters who suggest that third parties should be provided the actual starting position data that are input to the stress test. These data include Enterprise information that is not public and may be subject to legal prohibitions or restrictions on disclosure or may otherwise unfairly disadvantage an Enterprise if disclosed. Given the statutory protections for proprietary data included in the 1992 Act and elsewhere,[44] OFHEO believes that the requirement of the 1992 Act that others be able to apply the test in the same manner as the Director should not be read to require the release of proprietary data. OFHEO anticipates that the information it is supplying to the public about the model meets this statutory requirement and provides interested parties with a solid understanding of the interaction in the model of credit and interest rate stresses and an ability to understand the capital implications of changes in an Enterprise's risk profile. OFHEO strongly favors promoting market discipline. Because of the forward-looking nature of the stress test, OFHEO's periodic publication of the current capital numbers together with current capital classifications will promote such discipline.

2. Predictability v. Flexibility

The comments suggest that in order for the stress test to be useful to the Enterprises in their businesses, its results must be sufficiently predictable to permit it to be used as a planning tool, while sufficiently flexible to take into account new products or other innovations by the Enterprises. From these somewhat competing considerations flowed a range of comments concerning the frequency with which OFHEO should amend the

[43] The stylized data set will include a realistic mix of on- and off-balance sheet items of a hypothetical Enterprise. It will allow any interested party to run the test, to vary the mix of items, add or delete items, change starting interest rates, modify historical house price patterns, and understand potential impacts of these actions or events upon Enterprise capital.

[44] *See, e.g.,* 12 U.S.C. 4611(e)(3); 18 U.S.C. 1905.

regulation, the process that would be followed for changing the regulation, and the treatment of new activities and instruments, i.e., those for which the stress test does not currently prescribe a treatment.

Some commenters suggested that the final rule specify a process for routine updating of the stress test to incorporate industry improvements in risk management techniques. One commenter recommended specifying a threshold, expressed as a percentage of the minimum capital requirement, that would determine when changes require notice and comment. For changes that would not reach the threshold, the commenter recommended specifying a one-year implementation period and for changes that are proposed for notice and comment, a two-year period. Other commenters, including Fannie Mae, recommended severely limiting changes to create ''stability'' in the stress test. Freddie Mac recommended that OFHEO affirm that it would follow the Administrative Procedure Act (APA) when changes are made to the final regulation.

The final rule balances the concern for stability with the concern for flexibility, recognizing that the nature of the Congressional mandate and the dynamic nature of the Enterprises' businesses will require an ongoing assessment of how well the stress test achieves its objectives. To achieve its statutory objective of aligning capital to risk, the stress test necessarily must evolve as the risk characteristics of new and complex instruments and activities become better understood and modeling techniques more highly developed. Therefore, OFHEO cannot eliminate uncertainty about how the stress test might evolve without reducing the sensitivity of the stress test to risk. Sufficient discretion must be retained by the Director to respond to innovations as they occur. And yet, in its important particulars, there must be enough stability in the stress test to allow the Enterprises and others to predict with reasonable confidence the impact that changes in their business plans or the economy may have on their capital requirements.

OFHEO will continue to monitor and study changes in the Enterprises' businesses and the markets in which they operate. OFHEO also will evaluate new statistical data that become available to determine whether they have implications for Enterprise risks. These continuing efforts will, doubtlessly, suggest reestimation of the models and other changes to the stress test from time to time. However, OFHEO does not find it appropriate at this time to specify a process, beyond the APA, for routine updating of the rule or to commit in advance to limiting the size or frequency of changes to the rule. Only after the rule has been operational for a significant period of time can OFHEO assess whether there is a need for further rulemaking to specify a change process. In any event, OFHEO affirms that any future amendments to the regulation will comply with the APA.

3. New Enterprise Activities

a. Proposed Rule

Section 1750.21 of the proposed regulation and section 3.11 of the Proposed Regulation Appendix together were designed to implement the substantive risk-based capital requirements of the 1992 Act,[45] the notice and comment requirements of the APA,[46] and the replicability and public availability requirements of sections 1361(e) and (f) of the 1992 Act.[47] The quarterly capital calculations required by the 1992 Act[48] must, as accurately and completely as possible, capture the risks in the portfolio of each Enterprise. The requirement that classifications be done on not less than a quarterly basis is designed to ensure that changes in the risk profile of an Enterprise are captured frequently and reasonably close in time to when they are reflected on an Enterprise's books.

Given the dynamics of the marketplace and the Enterprises' business, it is not possible to construct a regulation that specifies a detailed model that could predict every new type of instrument or capture every new type of risk that might emerge from quarter to quarter. Therefore, to comply with the requirements of the 1992 Act, the proposed regulation included a provision, section 3.11 of the proposed Regulation Appendix, to address future instruments and activities, thus enabling each quarterly capital classification to be as accurate as possible. Section 3.11, together with other provisions in the regulation, was intended to help achieve that accuracy.

More specifically, section 3.11 of the proposed Regulation Appendix provided that the credit and interest rate risk of new activities and instruments would be reflected in the stress test by simulating their credit and cash flow characteristics using approaches already described in the Appendix. To the extent those approaches were not applicable directly, OFHEO proposed to combine and adapt them in an appropriate manner to capture the risk in the instruments. Where there is no reasonable approach using combinations or adaptations of existing approaches, the proposed stress test would employ an appropriately conservative treatment, which would continue until such time as additional information is available that would warrant a change to the treatment.

In addition to the substantive provisions of section 3.11 of the proposed Regulation Appendix, procedures were proposed in that section and in section 1750.21 of the regulation that would give the Enterprise involved advance notice of the treatment to be implemented and an opportunity to comment on it before it is implemented. Procedurally, proposed section 3.11 provided that an Enterprise should notify OFHEO of any pending proposal related to new products, investments, or instruments before they are purchased or sold or as soon thereafter as possible. The procedures in the proposed rule were also intended to encourage the Enterprise to provide OFHEO with any suggestions it may have as to an appropriate risk-based capital treatment for the activity or instrument. With the benefit of the information provided by the Enterprise, OFHEO would then notify the Enterprise of its estimate of the capital treatment as soon as possible.

Beyond these provisions, proposed section 1750.21 provided that the Enterprise would be notified of the proposed treatment when OFHEO provided the quarterly Notice of Proposed Capital Classification. After receiving that notice, the Enterprise would have thirty days to provide further comments to OFHEO. Those comments would be considered by OFHEO prior to issuing the final capital classification. Further, to ensure that the rest of the public could apply the test in the same manner as the Director, OFHEO planned to make the new treatment available to the public through an appropriate medium, such as the **Federal Register**, OFHEO's website, or otherwise. Comments from the public on these notices would be considered by OFHEO. Taken together, all of these provisions implement the procedural provisions of the 1992 Act and the APA, while assuring that the timely, complete and accurate capital classifications required by the 1992 Act are carried out.

b. Comments

Numerous comments addressed the capital treatment of new activities proposed in section 3.11 of the Regulation Appendix in NPR2. These

[45] 12 U.S.C. 4614, 4618.

[46] 5 U.S.C. 553.

[47] 12 U.S.C. 4611(e), (f).

[48] 12 U.S.C. 4614(c).

comments all urged OFHEO to adopt a clearly understood procedure that would be sufficiently flexible to allow the Enterprises to continue introducing new products. They emphasized that delay and uncertainty about treatments of new activities could frustrate introduction of innovative new products and business lines at the Enterprises.

The Enterprises both recommended that the process for new activities should allow them to understand as soon as possible the effect on capital of any new types of products or instruments that they introduce. Both Enterprises offered suggestions in the context of their recommendation that the stress test be run using their own infrastructures.[49] Although these suggestions differed in their details, both would allow the Enterprises to develop and implement capital treatments for new activities, subject to subsequent review and change by OFHEO.

Other commenters suggested that if OFHEO determined that a proposed treatment for a particular new activity would have a minimal impact upon total risk-based capital, that the treatment should be expedited and that no notice and comment process should be required. Treatments that would have a substantial impact on capital would be implemented using notice and comment procedures under the APA. One commenter suggested that a risk-based capital ''surcharge'' be applied ''on top of the normal capital requirements'' to account for any new activities until sufficient data could be compiled to determine the risk inherent in such activities. Another commenter recommended three modifications to the treatment of new activities in the NPR: first, that OFHEO use historical data from reliable sources and confer with bank regulators to determine the most appropriate treatments; second, that OFHEO use a transparent comment process, including review by a technical advisory board that would allow input on treatments of new activities from all interested market participants; and third, that the treatments for new activities should be incorporated timely into the stress test.

c. OFHEO's Response

The Enterprises' recommended approaches, in which they would implement capital treatments subject to subsequent OFHEO review, are not practicable within the framework of the final rule because OFHEO will run the stress test using its own computers and its own infrastructure. Nevertheless, OFHEO recognizes the importance of making timely decisions about the capital treatments for new activities. Before the risk-based capital amount of the affected Enterprise for a particular quarter can be calculated, those decisions must be made about all new activities introduced during that quarter. Accordingly, OFHEO has developed a process to make its own independent and informed determination of the appropriate capital treatment for new activities as early as possible, with input from the Enterprises, rather than relying upon their judgments for the first quarterly capital classification after a new activity reported in the RBC Report. OFHEO believes that this process (discussed below) will not impede the development or introduction of new products or other types of business innovation.

As discussed above, OFHEO received various recommendations regarding the appropriate notice and comment procedures for new activities. OFHEO has fully utilized notice and comment procedures, discussed at IC., Rulemaking Chronology, in promulgating this regulation and OFHEO included procedures in NPR2 that will provide ongoing notice and comment for treatments of new activities. In addition, the final rule modifies NPR2 to clarify that the Enterprises are encouraged to provide their recommendations regarding treatments of their new activities and that the broader public will be notified of treatments once they are included in a final capital classification. The public is encouraged to submit their views regarding such treatments, which will be considered by OFHEO on an ongoing basis.

OFHEO believes that public input in the development of rules is essential for sound and fair regulation of the Enterprises. At the same time, to comply with the 1992 Act, OFHEO needed to establish procedures for new activities that would permit the accurate and timely capital classifications required by the 1992 Act. Accordingly, the regulation provides for notice to the affected Enterprise and the public and for consideration of comments received, while it also ensures the ability of OFHEO to conduct continuous, timely and complete capital calculations.

As time passes and a significant volume of new activities has been addressed through the section 3.11 New Activities process, it may be appropriate to propose an amendment to the regulation, utilizing the notice and comment procedures of 5 U.S.C. 553, that would specify treatments for a group of new activities. Although the public will have had the opportunity to provide comments on individual activities on an ongoing basis, this additional process would enable OFHEO to benefit from supplementary comments that are framed in the context of a broader body of risks.

In response to the recommendation regarding an external technical advisory board, OFHEO does not consider it appropriate to require by rule that such a board review the treatment of all new activities. OFHEO is satisfied that the wide diversity of technical expertise of its staff, combined with the normal notice and comment process, will generally provide adequate analysis and review of new activities.

As to the comment suggesting a capital ''surcharge'' for new activities on top of the ''regular'' risk-based capital requirement, OFHEO believes that its approach to new activities is appropriately flexible to take into account the risks inherent in any new, untested activity. OFHEO anticipates that it will be able to model effectively many (if not most) new activities explicitly according to their terms or with combinations or adaptations of existing treatments. Where the risk of a new asset type cannot be captured adequately using specified treatments or combinations or adaptations of treatments, OFHEO may use an appropriately conservative fixed capital charge instead of or in addition to an existing modeling treatment. However, in a cash flow model (in contrast to a leverage ratio approach), a fixed capital charge may not be the best method to implement a conservative capital treatment for most instruments. In particular, applying a fixed capital charge for liabilities or for activities that are designed to reduce risk is rarely appropriate.

A more appropriate means of increasing the incremental capital associated with a particular asset in a cash flow model may be to apply a ''haircut'' to the cash flows from that asset, either directly or by otherwise specifying certain attributes that are relevant to the cash flows of these instruments.[50] A similar approach can be applied to instruments, such as derivative or insurance contracts that are designed to reduce risk. To the extent that a liability can not be modeled according to its terms, the appropriate approach is generally to

[49] *See* III.A.2., Proprietary/Internal Models.

[50] For example, requiring certain interest-bearing assets that are on the balance sheet to pay no earnings through the stress period could be an extremely conservative treatment, because the liabilities necessary to fund that asset would be paying interest throughout the stress period.

incorporate certain conservative assumptions about the amount of cash flow that will be required from the Enterprise.[51] For these reasons, OFHEO believes that the flexibility afforded by section 3.11 is preferable to the imposition of a surcharge for new activities.

In sum, the OFHEO has not altered its proposed approach to new activities, but, based upon the comments, determined that some clarification of that approach in the final regulation would be useful. Therefore, the final rule adopts § 1750.12 of the proposed regulation and section 3.11 of the proposed Regulation Appendix with some modifications. The revised definition of new activities in section 3.11.1.b of the Regulation Appendix clarifies that the section applies not only to new transactions and instruments, the most common new activities, but also other types of new activities. The term ''new activities'' is, therefore, defined broadly to include any asset, liability, off-balance-sheet item, accounting entry, or activity for which a stress test treatment has not previously been applied. This definition would include any such items that are similar to existing items, but that have risk characteristics that cannot be taken into account adequately with existing treatments. The definition further clarifies that an instrument or activity may be treated as a ''new activity'' if it increases in volume to such an extent, or if new information indicates, that an existing treatment does not account adequately for its risk.

In section 3.11.2.a, which replaces proposed section 3.11(c), the words ''are expected to'' have been replaced with the word ''shall'' and the phrase ''no later than in connection with submission of the RBC Report provided for in § 1750.12'' has been replaced with the phrase ''within 5 calendar days after the date on which the transaction closes or is settled.'' This requirement is also reflected in the regulation text at § 1750.12(c) in the final regulation. These changes are designed to address concerns that appropriate capital treatments of new products be determined as quickly as possible. Timely determinations of capital classifications and required capital amounts provide an early warning of a potential strain on an Enterprise's capital. They also serve the interests of many commenters who felt that delay and uncertainty about capital treatments of new activities could impede innovation at the Enterprises.

OFHEO anticipates that, ordinarily, the Enterprises will notify OFHEO of significant new activities well in advance of entering into the actual transactions and will provide draft documentation, anticipated cash flow analysis, and recommended capital treatments as that information is developed for the Enterprises' internal decision-making. For new activities that do not involve transactions, such as an accounting change, OFHEO anticipates that relevant information will be made available well before actual implementation of the new activity. This type of coordination will allow OFHEO to develop initial capital treatments at the same time that an Enterprise is incorporating the new instruments into its own internal models, reducing uncertainty about the capital impact of new activities and allowing the new treatments to be implemented quickly enough to facilitate timely capital calculation and classification. OFHEO anticipates that the Enterprises will incorporate into their internal systems and procedures for product development the process of obtaining the views of OFHEO as to the appropriate capital treatment of each new activity. However, OFHEO realizes that it might not always be possible for the Enterprises to provide notification to OFHEO of a new activity well before submission of the quarterly RBC Report. As with any federally-regulated financial institution, if an Enterprise were to market a new instrument or engage in some new business activity without coordinating with its regulator to determine, in advance, an appropriate initial capital treatment, that initial treatment would necessarily be conservative—that is, it would ensure, in the absence of complete information, that sufficient capital is set aside to offset any risks that may be associated with the new instrument or activity.

Section 3.11 as proposed in NPR2 has also been changed to include three new provisions that expressly state OFHEO's intentions in the implementation of this section. First, section 3.11.2.a encourages an Enterprise that is in the process of or has engaged in a new activity to provide OFHEO with its recommendations regarding the treatment of that activity when it first provides information regarding the activity to OFHEO. Any recommendations will be considered by OFHEO in developing the proposed capital classification. The Enterprise will have the opportunity to comment on that treatment in connection with its other comments on the proposed capital classification.

Second, section 3.11.3.d provides that after a treatment has been incorporated into a final capital classification, OFHEO will provide notice to the other Enterprise and the broader public of that treatment. OFHEO will consider any comments it receives from those parties regarding such treatment during subsequent quarters.

Finally, section 3.11.2.b provides that the stress test will not give an Enterprise the benefit associated with a new activity where the impact of that activity on the risk-based capital level is not commensurate with its economic benefit to the Enterprise. Although it is not expected that the Enterprises would want to deal in transactions or instruments that do not have legitimate business purposes, OFHEO must retain the authority to exclude such instruments from risk-based capital calculations should they occur.

4. Standardized Reporting

The Enterprises suggested that OFHEO specify a standardized RBC Report. Such specifications would include sufficiently detailed instructions to allow the Enterprises to aggregate the data in a format that can be input directly into the stress test. OFHEO agreed with this suggestion and has developed such a report. The report will shorten considerably the time needed to produce the risk-based capital requirements. It will also provide the Enterprises with more certainty in performing their own risk-based capital calculations.[52]

5. Capital Classification Process

a. Comments

The Enterprises requested that the regulation describe a practical and timely process for reporting risk-based capital and determining capital classifications. A number of specific suggestions were made. First, they both recommended that they would report stress test results quarterly along with the data used to run the stress test and OFHEO would then determine quarterly capital classifications based on the Enterprises' calculations. Freddie Mac also recommended that OFHEO classify an Enterprise as adequately capitalized if it meets the minimum capital requirement and quickly remedies a failure to meet the risk-based capital requirement before the classification is reported. Freddie Mac further recommended that OFHEO retain the discretion to specify when the quarterly

[51] If, for example, the amount of interest on a note was indexed to a volatile indicator that could not be modeled in the stress test, a conservative treatment might be to require that instrument to pay interest throughout the stress period at a rate significantly higher than the average return of the Enterprise on its assets during that period.

[52] *See* II.B., Data.

capital reports are due rather than specifying that they must be filed within 30 days of the end of the quarter. Finally, Freddie Mac recommended that the regulation require an Enterprise to amend a capital report only if a data input revision might result in a capital reclassification.

b. OFHEO Response

As noted above, OFHEO will run the stress test and determine capital classifications using its own systems using data reported by the Enterprises in a standardized format. The Enterprises may duplicate OFHEO's stress test calculations by running the stress test in the same manner as OFHEO. If an Enterprise believes there are discrepancies, it may comment on them during the 30-day response period following OFHEO's notice of proposed capital classification.

OFHEO did not adopt Freddie Mac's suggestion that the Enterprises be given an opportunity to remedy capital shortfalls before the capital classification is reported. Since the risk-based capital requirement is based on data submitted by the Enterprises as of a particular point in time, it is appropriate to determine whether an institution meets the standard as of that date for classification purposes. Although the classification could be accompanied by a description of any remedial actions an Enterprise has taken since the reporting date, it would not be possible to know with certainty that the remedial action brought the Enterprise into compliance with its risk-based capital standard without running the stress test again with new starting position data on its entire book of business.

The final regulation does not change the requirement that the RBC Report be filed within 30 days of the end of the quarter. OFHEO believes the RBC Report should be filed as promptly as possible after the end of quarter so that the capital classification can be determined promptly, and, in any event, within the same 30 days required for the minimum capital report. OFHEO recognizes that, initially, Enterprise preparation of the RBC Report will require more time and effort than is needed for the minimum capital report. Therefore, during the one year period following promulgation of the final rule, OFHEO will consider requests for an extension on a case-by-case basis.

OFHEO has determined that an amended RBC Report should be filed whenever there are errors or omissions in a report previously filed and not, as Freddie Mac suggested, only when the change would result in a different capital classification. In OFHEO's view, prudent monitoring of risk-based capital requires the reporting of all changes. The rule makes clear that the Enterprise is obligated to notify OFHEO immediately upon discovery of such errors or omissions and file an amended RBC Report within three days thereafter. In addition, the final rule clarifies that if there is an amended report, the computation of the risk-based capital level will still be based on the original report unless the Director, in his/her sole discretion, determines that the amended report will be used.

The final rule also requires the board of directors of an Enterprise to designate the officer who is responsible for overseeing the capital adequacy of the Enterprise as the officer who must certify the accuracy and completeness of the RBC Report.

NPR2 proposed to delete existing section 1750.5, which sets forth the capital classification procedure under the minimum capital rule, and replace it with a new subpart that would govern capital classification under both the minimum and risk-based capital rules. Subsequent to the publication of NPR2, OFHEO published a notice of proposed rulemaking entitled Prompt Supervisory Response and Corrective Action,[53] which includes a more comprehensive proposal related to capital classification than NPR2. Because OFHEO anticipates that the Prompt Supervisory Response and Corrective Action rule will be adopted prior to the first classification of the Enterprises under the risk-based capital rule, existing section 1750.5 is not deleted and proposed subpart C is not adopted in this final rule.

6. Interaction With Charter Act Provisions

Freddie Mac requested that OFHEO clarify the interaction of this risk-based capital regulation with the capital distribution provisions of Enterprises' respective Charter Acts during the one-year period following the effective date of the regulation. The Charter Act provisions are already in effect and have been since enactment of the 1992 Act.

During the one-year period after promulgation of the final rule, OFHEO will take into consideration the need for the Enterprises to adjust to the new rule, and will exercise its authority under the Charter Act provisions in a manner appropriate to the circumstances and consistent with OFHEO's intent to provide the Enterprises a one-year transition period to adjust to the risk-based capital requirement. During such period, there would be no impact on an Enterprise's ability to make capital distributions absent adequate prior notice to the Enterprise of its capital position and adequate opportunity to take reasonable and prudent steps to address any articulated deficiency.

7. Implementation

OFHEO has taken appropriate proactive measures to ensure a smooth implementation of the risk-based capital (RBC) rule and the computer code that implements the rule. These measures, which include independent verification and testing of the code, minimize the likelihood of unforeseen technical or operational issues. However, should any such issues arise, OFHEO has ample and flexible authority, which it will utilize to resolve them quickly.

a. Computer Code Enhancements

After publication of the RBC rule, OFHEO will make available to requesting parties the computer code that implements the technical specifications of the rule and a dataset representative of the Enterprises' businesses. OFHEO encourages feedback on the operation of the code by parties who utilize it, including suggestions for more efficient ways to code the technical specifications of the rule.

The computer code that implements the RBC rule will necessarily evolve over time as the businesses of the Enterprises evolve and as OFHEO builds efficiencies into the code to enhance its operation and utility. Also, as the Enterprises seek to adapt their systems to run the stress test internally, they may suggest alternative methods of coding the technical specifications of the rule that would enable them to compile their data submissions more quickly or produce results more efficiently. OFHEO will consider adopting a suggested change in the code provided it accurately reflects the computational instructions of the rule and can be applied accurately and fairly to both Enterprises. OFHEO will develop a process for the receipt, review, and disposition of suggested changes to the code.

In addition, OFHEO has the authority to make any changes it deems necessary to the code at any time, without notice and comment, as long as those changes are not inconsistent with the technical specification of the RBC rule. This authority allows OFHEO to address any technical or other problems that might arise in the operation of the code on a timely basis. Any changes to the code will be made available to the public.

[53] 66 FR 18694 (April 10, 2001).

b. RBC Rule Revisions

OFHEO will consider over time the need for formal amendments to the RBC rule after its effective date. If at any time after the effective date a need arises to amend the rule on an urgent basis, OFHEO has ample authority under the 1992 Act [54] to make such changes on a timely basis consistent with the APA. The Senate Report accompanying the 1992 Act makes it clear that Congress recognized that the stress test must necessarily evolve as the Enterprises' businesses evolve and contemplated that a variety of procedural options for quick action would be necessary to keep current the risk-based capital regulation. In regard to the risk-based capital regulation, the Report states that ''[t]he regulations must be sufficiently detailed to allow others to comment meaningfully on them and approximate closely their effects.'' It goes on to emphasize that ''[o]rders or guidelines may be used for some of the finer details to permit flexibility to make small changes on a rapid basis when necessary.'' [55]

The APA provides a variety of procedural options that would be available to remedy technical problems in the RBC rule, whether they are minor or significant. First, the Director may act quickly, without notice and comment, to make technical corrections, clarifications, or interpretations of the rule. This authority would permit most technical and operational problems to be remedied expeditiously. The Director would publish the correction, clarification, or interpretation of the rule in the **Federal Register** and make revisions to the code available. Second, should a more substantive change to the technical specifications be required, the Director may separately issue a direct final rule or a final rule on an interim basis with request for comment, either of which would take effect immediately. Third, the Director, in a separate rulemaking with a relatively short comment period, may propose amendments to the risk-based capital regulation and move quickly to a final rule amending the risk-based capital regulation. These and other administrative tools are available to address any technical or operational problems that may arise in the implementation of the rule.

C. Implications

OFHEO received extensive comments about the implications of the proposed risk-based capital rule from the Enterprises, financial service organizations, trade associations, and affordable housing advocacy groups. The commenters focused on three primary issues: (1) Whether the risk-based capital rule properly aligns required capital to economic risk, (2) whether the rule would increase the cost of home ownership generally; and (3) whether the rule would result in the Enterprises reducing their support for affordable housing. There was a diversity of opinion on these issues. Commenters also provided many specific recommendations with respect to the implications of the risk-based capital rule. OFHEO has responded to these recommendations under the specific topics to which they relate.

1. Aligning Capital to Economic Risk

The commenters generally agreed that a stress test is an appropriate method to align capital to risk. Nevertheless, some commenters, including the Enterprises, investment firms, and some trade associations, stated that OFHEO needs to improve the alignment of capital to economic risk and offered specific suggestions to accomplish this, which are discussed under the specific topics to which they relate. These commenters claimed that failure to align capital to economic risk may reduce the availability of certain products, create disincentives to risk sharing and risk reduction, and result in price distortions.

OFHEO continues to believe that the significant stresses that the regulation applies to the Enterprises' books of business are appropriate for determining the risk-based capital requirement and to align required capital closely to the economic risk. Nevertheless, many of the modifications to the regulation made by OFHEO align capital more closely to the economic risk, based in part on specific suggestions offered during the rulemaking process. These modifications are also discussed under the specific topics to which they relate. As a result of these changes, OFHEO believes that the final risk-based capital rule provides an even better mechanism for closely aligning regulatory capital to economic risk than the proposed rule.

OFHEO is charged with ensuring the continued viability of the regulated entities so that they can continue to carry out their important public purposes, including promoting affordable housing and a stable and liquid secondary mortgage market. As a financial regulator, OFHEO may have a different perspective on the types of risks that must be capitalized and the appropriate corresponding capital levels than the financial institutions it regulates. Prudent risk managers generally respond to increased risk by either increasing their capital in line with the increase in risk or by taking steps to reduce or hedge risk. Publicly traded companies, such as the Enterprises, will always be under pressure to obtain a competitive return on equity for their shareholders and to maintain a significant level of capital distributions. OFHEO's risk-based capital regulation provides a strong incentive for the Enterprises to resist excessive shareholder pressure for short-term returns and essentially requires the Enterprises to exercise the kind of prudent risk management that will ensure that they have sufficient capital to protect them in times of economic stress and volatility.

2. Effect on Home Ownership Generally

a. Comments

Commenters voiced significant disagreement about whether the risk-based capital rule would increase mortgage rates and the cost of home ownership generally. The Enterprises, Wall Street investment firms, and some trade groups expressed concern that the proposed regulation would require an Enterprise to hold what they termed an ''unreasonable'' amount of capital. These commenters asserted that requiring an ''unreasonable'' amount of additional capital would increase mortgage interest rates and thus decrease the affordability of a mortgage and the availability of funding for home purchases.

Other financial services organizations, including GE Capital, AIG, and CMC argued that higher capital requirements do not necessarily translate into higher mortgage interest rates. They noted that the Enterprises have several options other than passing along the cost of higher capital to lenders and ultimately home buyers. For instance, these commenters stated that the Enterprises could issue additional equity, take on less risk, or implement various risk mitigation activities. These commenters further noted that critics of the risk-based capital proposal focused only on the negatives, while ignoring the benefits of an effective risk-based capital standard, particularly the significant benefit of decreasing the risk of failure of the Enterprises. One commenter stated that OFHEO should err on the side of requiring more capital rather than less, given the Enterprises' size and importance to the U.S. economy.

b. OFHEO's Response

After a review and analysis of the comments, OFHEO concluded that the risk-based capital regulation, as

[54] 12 U.S.C. 4513, 4526, 4611.

[55] S. Rep. No. 102–262 (1992), p. 23.

modified, properly implements Congress' desire for the Enterprises to hold an appropriate level of capital to minimize the risk of failure of the Enterprises, increasing the likelihood that the Enterprises can continue to carry out their important public purposes. The significant credit and interest rate stresses mandated by the 1992 Act are designed to produce a capital requirement that encourages the Enterprises to manage risk appropriately and that results in a capital requirement that adequately reflects risk.

OFHEO does not agree that the rule would necessarily or even likely result in higher mortgage rates that would ultimately be passed along to consumers. First, OFHEO believes that the Enterprises will be able to meet the requirements of the regulation at relatively little or no cost, as discussed in NPR2.[56] Moreover, prices are not tightly tied to costs in any event. Second, because the Enterprises are subject to a stringent capital regulation, the financial markets may perceive that the Enterprises are less risky. Such a market assessment would likely be reflected in the pricing of the Enterprises' debt and equity, especially subordinated debt, which is particularly market sensitive. Third, even if the risk-based capital regulation were to have some minor effect on one Enterprise's cost of lending and that Enterprise attempted alone to pass this cost along through higher guarantee fees, that Enterprise would risk losing market share.

As noted by several commenters, an Enterprise has numerous cost-effective methods to offset any additional risk-based capital requirements and may adjust to the standard in ways that do not necessarily result in increased mortgage rates. OFHEO agrees with this observation and notes that an Enterprise has several options to accomplish this task. For instance, financial markets provide a wide array of sophisticated ways to manage interest rate risk, including callable long-term debt, caps and floors, swaps and swaptions, and interest rate derivative contracts. In addition, an Enterprise could reduce credit and interest rate risk by reducing the rate of growth of its asset portfolio, increasing the credit protection on riskier assets that it guarantees or holds in portfolio, or reducing the rate of growth of its mortgage guarantee business. An Enterprise may also respond to increased capital requirements by increasing capital by reducing share repurchases, adjusting dividends, or issuing new equity shares.

OFHEO therefore concludes that an Enterprise has broad latitude to select the method or methods to manage its risks and comply with the risk-based capital requirement without increasing mortgage rates. These various strategies will have different direct costs, but may well result in fewer credit and interest rate losses over time.

3. Effect on Affordable Housing

a. Comments

A number of commenters voiced significant disagreement about whether the risk-based capital rule would impair the Enterprises' efforts to promote the availability of mortgage funds to support affordable housing for low- and moderate-income Americans. The Enterprises, affordable housing advocacy groups, and some trade associations and financial firms expressed concern that the rule may cause the Enterprises to decrease the availability of funds used to purchase affordable housing. These commenters believed that the rule could impair the Enterprises' ability to serve low-income borrowers and hinder the financing of multifamily and rental properties. One commenter stated that the Enterprises should be awarded capital bonuses for engaging in affordable housing activities.

In contrast, other financial service organizations stated that there is no ''automatic'' conflict between having rigorous capital standards for the Enterprises and increasing the supply of funds for affordable housing. These commenters noted that HUD, not OFHEO, should address affordable housing issues through its affordable housing regulations.

b. OFHEO's Response

OFHEO continues to believe that the risk-based capital standard will not have a noticeable adverse affect on the Enterprises' ability to purchase affordable housing loans, particularly with respect to single family loans. OFHEO notes that the Enterprises obtain similar profitability from their affordable housing loans as their general loan portfolio. As OFHEO noted in NPR2,[57] the capital cost of single family loans meeting HUD's affordable housing goals is not materially different from the cost of other loans for equivalent loan-to-value (LTV) ratios. Although the stress test distinguishes among loans based on LTV ratios, it makes no specific distinctions with respect to loans to different income groups. Moreover, OFHEO has modified the single family model to calibrate defaults to the benchmark loss experience by LTV category, which should alleviate some of the commenters' concerns about the treatment of high LTV loans. *See* III.I.1., Single Family Mortgage Defaults and Prepayments. OFHEO further notes that the Enterprises' affordable housing programs are currently well run, and the Enterprises effectively mitigate increased risks associated with high LTV loans with credit enhancements. In addition, the final rule modifies the treatment of low-income housing tax credits, which some commenters considered to be punitive. *See* III.N., Accounting, Taxes, and Operating Expenses.

OFHEO disagrees with the comment that OFHEO should award capital bonuses to an Enterprise for engaging in affordable housing activities. OFHEO agrees with those commenters who stated that HUD's affordable housing regulations are the appropriate method for ensuring that sufficient attention is given to affordable housing. The purpose of the risk-based capital regulation is to ensure that the Enterprises' capital is properly aligned with risk. Even if the risk-based capital standard required additional capital related to a portion of the Enterprises' affordable housing activities, such a requirement would be consistent with ensuring that the Enterprises hold sufficient capital for the risks they take. Failure to align capital with the credit risk of particular loan programs could result in curtailment or cessation of those programs. Freddie Mac's early experience with multifamily loans is a case in point. Losses on that program caused Freddie Mac to cease multifamily lending altogether in the early 1990s.

D. Benchmark Loss Experience

In NPR1, OFHEO proposed the methodology to identify the contiguous areas containing five percent or more of the U.S. population that experience the highest rate of default and severity of mortgage losses for a time period of two or more years as required by the 1992 Act.[58] Losses experienced by loans in the identified time and place are referred to as the ''benchmark loss experience.'' The credit stress of the stress test must be reasonably related to the benchmark loss experience.

The proposed methodology involves four steps. The first step is to identify the benchmark loss experience using historical loan-level data submitted by each Enterprise. The analysis is based on currently available data of conventional, 30-year fixed-rate loans

[56] 64 FR 18114, April 13, 1999.

[57] 64 FR 18116, April 13, 1999.

[58] 12 U.S.C. 4611(a)(1).

secured by first liens on single-unit, owner-occupied, detached properties. The data include only loans that were purchased by an Enterprise within 12 months after loan origination and loans for which the Enterprise has no recourse to the lender. The second step is to organize the data from each Enterprise to create two consistent data sets. During this process, OFHEO separately analyzes default and severity data from each Enterprise. The third step is to calculate for each Enterprise the cumulative 10-year default rates and severity rates for each combination of States and origination years (State/year combination) by grouping all of the Enterprise's loans originated in that combination of States and years. In this step, hundreds of State/year combinations are calculated and analyzed. The fourth step is to calculate the ''loss rate'' by multiplying the average default rate for that State/year combination by the average severity rate. The State/year combination fulfilling the population and time requirements with the highest loss rate constitutes the benchmark loss experience. Using this methodology, OFHEO identified loans originated in 1983–1984 in the four State region of Arkansas, Louisiana, Mississippi, and Oklahoma (ALMO) as the current benchmark loss experience (''ALMO benchmark loss experience'').

In NPR2, OFHEO described how the benchmark loss experience would be used in the stress test and, building on the methodology proposed in NPR1, used the benchmark cohort of loans [59] to conduct simulations to demonstrate the sensitivity and implications of the proposed rule. As explained in NPR2, the equations used in the mortgage performance models are estimated based upon OFHEO's historical database of mortgage information to predict the most likely default and severity rates for any given group of mortgages under any given pattern of interest rates and house prices.[60] NPR2 also proposed methods of reasonably relating the credit stress of the stress test to the benchmark loss experience.

1. Methodology

Most commenters, including the Enterprises, mortgage insurers, and trade groups, generally stated that the proposed methodology was workable, but suggested changes. A number of commenters, who criticized the benchmark loss experience methodology based on NPR1, were significantly less concerned when they evaluated the issue in the context of NPR2. Freddie Mac concurred generally with OFHEO's methodology to identify the benchmark loss experience and specifically with the selection of the ALMO benchmark loss experience. Nevertheless, as discussed below, Freddie Mac stated that the historical data used to identify the benchmark loss experience should be adjusted or else the benchmark loss experience default and loss severity rates' loss rates would be overstated. Fannie Mae stated that while the methodology for identifying the benchmark loss experience has certain difficulties, such difficulties could be addressed by adjusting the default and severity models. GE Capital stated that because the proposed methodology is reasonable, any changes should wait until the next generation of the model.

Commenters had divergent views on whether the credit conditions identified by the methodology were sufficiently stressful. Some commenters claimed that the proposed methodology does not produce a benchmark loss experience that is stressful enough. These commenters asserted that the proposed methodology identified only a two-year origination period rather than a ten-year period for default and severity rates and that by averaging certain factors (e.g., time and Enterprises' default rates), the methodology resulted in an average rather than a worst case scenario. In contrast, other commenters, including the Enterprises, stated that the benchmark loss experience was more severe than any national experience and more severe than could be expected to occur in a diversified national economy.

The final regulation makes no changes in the proposed methodology for identifying the benchmark loss experience. In evaluating the commenters' suggestions for modifications, OFHEO's first priority was to implement the 1992 Act appropriately. Accordingly, OFHEO determined that it was appropriate under the statute to select the loans originated during a two-year period that had the highest ten-year cumulative default and severity rate (rather than selecting the two-year period that experienced the highest losses on all loans) and to average between the Enterprises. Further, because the purpose is to identify a regional benchmark loss experience and apply it to the nation as a whole, OFHEO did not consider the comments about geographic diversification to be relevant.

OFHEO also sought to balance the benefit of the recommended modifications with the associated costs. With respect to costs, adopting the recommended modifications would divert time and resources from modifications to the stress test in response to comments, delaying the issuance and implementation of the regulation. Based on an analysis of the proposed methodology in light of the related comments, OFHEO has concluded that implementing the commenters' recommendations for revising the methodology would at best provide only modest improvements in identifying a benchmark loss experience, and in some cases would provide little or no benefit. Consequently, OFHEO has decided not to modify the methodology at this time. The proposed methodology provides a reasonable method for identifying the region in which the Enterprises' mortgage loans experienced their worst credit losses.

2. Data Issues

The dataset used to identify the benchmark had certain limitations. Fannie Mae is unable to provide complete historical data for purposes of identifying the benchmark loss experience. Specifically, Fannie Mae has no loss severity data for retained loans originated before 1987 or for loans securitized under its swap program before 1991. In addition, a number of loans were misclassified by Fannie Mae. In NPR1, OFHEO concluded that, for the purpose of the benchmark analysis, it would be better to use the available data, than to speculate about the missing data or otherwise make adjustments to account for the missing or misclassified data.

Both Enterprises expressed concern that without making adjustments to account for the missing data, the benchmark loss experience calculation would overstate the actual default and loss severity rates. They were particularly concerned that these rates would be overstated for the ALMO benchmark loss experience in those years. Accordingly, they recommended that OFHEO introduce weighting and other techniques to adjust for the missing data. With respect to the missing swap program data, Freddie Mac recommended that OFHEO compare mortgages purchased under Fannie Mae's swap program with Freddie Mac's own program, and adjust the default rates accordingly. With respect to missing pre-1987 loss severity data, Freddie Mac recommended that OFHEO adjust the available loss severity data by weighting techniques to

[59] Those conventional 30-year fixed-rate loans in the State/year combination (i.e. loans originated in ALMO in 1983–1984) with the highest loss rate.

[60] *See* 64 FR 18118, April 13, 1999, for a more detailed description.

eliminate what it viewed as bias caused by assuming all loans were 30 year fixed-rate loans. The effect of this adjustment would lower loss severity rates in the benchmark loss experience.

After analyzing the comments, OFHEO has confirmed its original determination that it would be inappropriate to modify or otherwise "adjust" for the missing Fannie Mae historical data. It does not appear that Fannie Mae will ever be able to provide this data, and any attempt to adjust existing data based on assumptions about non-existing data would be speculative at best. Accordingly, OFHEO declines to introduce any additional weighting techniques or other assumptions to its initial decision to use the historical data as they exist. OFHEO believes that using the data as submitted by the Enterprises is appropriate, particularly given that the Enterprises' recommendations were based on speculative premises about how historical data would perform rather than empirical or other quantitative evidence.

3. Benchmark Region and Time Period

In NPR1 and NPR2, OFHEO stated that it would periodically monitor available data and reevaluate the benchmark loss experience using the methodology set forth in the Regulation Appendix. OFHEO noted that, using this methodology, it may identify a new benchmark loss experience in the future that has a higher loss rate than the one identified at the time of the regulation's issuance. It further noted that if such a benchmark is identified, OFHEO may incorporate the resulting new benchmark loss experience in the stress test.

Freddie Mac requested that the regulation specify not only the methodology to identify a benchmark loss experience, but also a specific benchmark loss experience, such as the ALMO benchmark loss experience for loans originated in 1983–1984. OFHEO has determined that it is more appropriate to include only the methodology in the regulation. The 1992 Act does not require that OFHEO specify a particular benchmark region and time period in the regulation. Moreover, given Congress' desire for the benchmark loss experience to represent a stressful credit environment, it would be inappropriate to reduce OFHEO's flexibility to identify a different benchmark loss experience if new data indicate that a change is appropriate.

4. Compactness

Freddie Mac suggested adding an additional criterion to the statutory criteria for identifying the benchmark loss experience. Specifically, Freddie Mac recommended that the regulation include what it termed a "compactness" requirement so that, in addition to the statutory requirement that the benchmark region comprise "contiguous" areas, the benchmark region would have to be a region in which a person could travel from any one State to any other State in the region, without traveling through more than one other State within the region.

OFHEO has determined that modifying the definition of the benchmark loss experience to include an additional compactness requirement is inappropriate and would be unworkable. As discussed in NPR1, OFHEO rejected options that would not provide for a reasonably compact benchmark region. For that reason, the proposed regulation specified States as the smallest geographic unit rather than using smaller geographic units such as zip codes and rejected a definition of "contiguous" that would include meeting at a point. It is possible that using smaller units could result in the equivalent of a gerrymandered benchmark loss experience in which it would contain only units with relatively more severe loss experience while excluding regions in the same State with a more benign loss experience. Freddie Mac's recommendation would impose an additional requirement that goes beyond what Congress specified and could preclude identification of an appropriately stressful credit environment. Moreover, the modification recommended by Freddie Mac might be difficult to determine and even unworkable, since there could still be numerous non-compact regions that would comply with Freddie Mac's recommended definition of compactness.

5. Population Requirement

Fannie Mae expressed concern that the ALMO benchmark loss experience may contravene the requirement that the benchmark loss experience contain at least five percent of the United States population, since it believed that the ALMO benchmark loss experience includes States that contribute significant parts of the population but may have few mortgage loans. That Enterprise was also concerned that the ALMO benchmark loss experience may not meet the five percent requirement over the entire stress period.

OFHEO has determined that neither concern is valid. First, the 1992 Act requires that the benchmark loss experience include "contiguous areas of the United States" containing at least five percent of the U.S. population. The statutory provision does not address the distribution of loans within that area or specify the designation of a "State" as a factor. Accordingly, it is the population of the identified area, not of a State or States within it, that is relevant in determining the benchmark loss experience. Second, the 1992 Act only addresses the population and not the number of mortgage loans. Congress could have specified loan volume as a criterion, but did not, and OFHEO declines to read such a specification into the statute. Third, the 1992 Act does not require that the population requirement be met during the entire stress period for the purpose of determining the benchmark loss experience. The statute only requires the stress conditions to persist for "two or more years." The ALMO benchmark loss experience complies with the statute because it had over five percent of the United States' population in the two year period of 1983 and 1984. OFHEO further notes that a region experiencing significant credit stresses may very well experience a decrease in population. Including the additional limitations suggested by Fannie Mae would reduce the severity of the benchmark loss experience and the stress test as a whole, a result that was not intended by Congress. Based on these considerations, OFHEO concludes that each of Fannie Mae's arguments is without merit.

6. Improvements in the Underwriting

GE Capital, in its reply comments, expressed concern that OFHEO would be persuaded by the Enterprises' arguments that the benchmark loss experience should be adjusted to reflect improvements in their underwriting practices, subsequent to the benchmark period. GE noted that although the Enterprises have improved their underwriting techniques since 1986, these improvements may not serve to reduce the frequency of default rates, given regional recessions such as in California and New England that occurred after 1986.

OFHEO believes that it would be inconsistent with the 1992 Act and inappropriate to adjust the benchmark loss experience based on the view that the Enterprises have improved their underwriting. First, improved underwriting is not relevant to identifying the benchmark loss experience, i.e., the worst time and place for credit stress. Rather, Congress intended the benchmark loss experience to define a severe level of credit stress that the Enterprises should be able to survive during a ten year period. To ''adjust'' for improved underwriting would be inconsistent with the statute, since it suggests that the Enterprises could never experience such a level of credit stress again. In addition, periodic modifications based on changes in underwriting would be difficult to implement.

E. Enterprise Data

In NPR2, OFHEO explained that the stress test would utilize data characterizing an Enterprise's assets, liabilities, stockholders equity, and off-balance sheet items at a point in time (''starting position data''). Under the proposal, OFHEO anticipated that each Enterprise would submit all data for mortgages, securities, and derivative contracts at the instrument level. The proposed stress test aggregated individual loans into groups with common risk and cash flow characteristics, known as ''loan groups.''[61] Data for these loans groups, instead of individual loans, were used as inputs by the mortgage performance and cash flow components of the stress test. In addition to the loan groups for existing loans, the stress test created loan group data for mortgages expected to be added to the Enterprises' books of business as a result of commitments outstanding as of the reporting date, using a process that is discussed in the ''Commitments'' section of this preamble III. F., Commitments. With respect to nonmortgage financial instruments (investments, debt, and derivative contracts), NPR2 proposed to project their cash flows at the individual instrument level rather than at an aggregated level, because they are fewer and more diverse.

1. Comments

Only Freddie Mac and Fannie Mae commented on OFHEO's proposed treatment of Enterprise data for the stress test. Both Enterprises emphasized the complexity of the proposed data submission process. Freddie Mac stated that in its submission for the second quarter of 1997, it provided more than 600 million data elements to OFHEO, which OFHEO then ''translated'' into data sets. It stated that this process results in ''a substantial number of translation errors'' which could impair the accuracy and reliability of the stress test. Similarly, Fannie Mae attributed most of the difficulty in operationalizing the stress test to the use and handling of instrument-level data, since the regulation requires the exchange, management and application of data on hundreds of thousands of different instruments and contracts.

Because of these problems, both Enterprises recommended that they, rather than OFHEO, be responsible for compiling and, where appropriate, aggregating the data into a standardized report, which would then be submitted to OFHEO. Freddie Mac stated that OFHEO should eliminate the need to perform data file translations by requiring the Enterprises to report their data files in a standardized format that OFHEO specifies in a ''call-report-like'' approach. Similarly, Fannie Mae recommended that each Enterprise submit a RBC Report with standardized elements.[62] Both Enterprises stated that such an approach is similar to the one taken by other Federal financial regulators with their reporting and capital requirements.

2. OFHEO's Response

Consistent with the comments, OFHEO has decided to have the Enterprises compile, and, where appropriate, aggregate their data and submit it to OFHEO in a standardized format specified by OFHEO. To implement this approach, OFHEO has specified a RBC Report with instructions for aggregating and reporting data in a standardized format. OFHEO agrees with the commenters that the data submission process must result in the submission of complete and accurate inputs to allow for the reliable and timely generation of a risk-based capital number. OFHEO believes that the approach in the final rule will fulfill this goal, because it serves to increase the efficiency and transparency of the process and the timeliness of the capital classification. OFHEO further believes that the data submission process will continue to be reliable, because each Enterprise will be required to certify that its submission is complete and accurate. In addition, the compilation of such data by the Enterprises will be subject to examination by OFHEO. This approach will permit capital classifications to be more timely because the standardized data can be input directly into the stress test without the need for data translation by OFHEO.

The stress test makes provision for items reported by the Enterprises that do not fall into the categories specified in the RBC Report or items for which the data is incomplete. If the item is a new activity, it will be treated as specified in section 3.11, Treatment of New Enterprise Activities, of the Regulation Appendix. Otherwise, where there is no appropriate specified treatment in the Regulation Appendix, or where data required to model the item are missing and there is no computational equivalent for such data and no available proxy acceptable to OFHEO, the item will be given one of the conservative treatments specified in section 3.9, Alternative Modeling Treatments, of the Regulation Appendix, depending on whether the item is an asset, a liability, or an off-balance sheet item. The treatments vary in the up-rate and down-rate scenarios and prescribe values for missing terms needed to determine cash flows. It is necessary to make provision for such items in order to permit the stress test to operate with incomplete data and to take into account highly unusual items that cannot be accommodated by specific stress test treatments. OFHEO expects that there will be few of these items in any given quarter.

F. Commitments

1. Background

The 1992 Act specifies that during the stress period the Enterprises will purchase no additional mortgages nor issue any MBS, except that—

> [a]ny contractual commitments of the enterprise to purchase mortgages or issue securities will be fulfilled. The characteristics of resulting mortgage purchases, securities issued, and other financing will be consistent with the contractual terms of such commitments, recent experience, and the economic characteristics of the stress period.[63]

The term ''contractual commitments'' generally refers to binding agreements that the Enterprises enter into with

[61] For example, a loan group might include all 30-year fixed-rate mortgages for single family homes in the same geographic region, originated in the same year, with similar interest rates and LTVs, and held in an Enterprise's portfolio. Such a process would allow over 24 million loans to be aggregated into a smaller number of loan groups that capture the important risk characteristics. Even with aggregation, there would be thousands of loan groups.

[62] These recommendations were accompanied by recommendations that the Enterprises be allowed to use models they would develop to OFHEO specifications to compute their risk-based capital requirement and report it to OFHEO along with the RBC Report. This recommendation is discussed in III. B., Operational Workability of the Regulation.

[63] 12 U.S.C. 4611(a)(3)(A). The 1992 Act does provide for later amendment of the rule to address new business during the stress period, but not until after the risk-based capital regulation is final. The 1992 Act requires that, within one year after this regulation is issued, the Director of the Congressional Budget Office and the Comptroller General of the United States shall each submit to the Congress a study of the advisability and appropriate form of any new business assumptions to be incorporated in the stress test. 12 U.S.C. 4611(a)(3)(C). 12 U.S.C. 4611(a)(3)(B) authorizes the Director to consider these studies and make certain new business assumptions. However, that subparagraph does not become effective until four years after the risk-based capital regulation has been issued.

seller/servicers to purchase mortgages or to swap mortgages for MBS. The term also refers to agreements to sell such securities to investors.

In NPR2, OFHEO proposed to model commitments outstanding on the beginning date of the stress test by adding new loans to the books of business of the Enterprises during the first year of the stress test, using specified decision rules that govern the volume and characteristics of these new loans. To avoid the complexity of modeling the mix of securitized mortgages versus those purchased for portfolio (which is largely determined by seller/servicers, based on a number of market factors) NPR2 specified that all loans delivered under commitments would be securitized. Second, NPR2 specified that, in the down-rate scenario, 100 percent of all loans that the Enterprises are obligated to accept would be delivered and, in the up-rate scenario, 75 percent of those loans would be delivered. Third, the proposal specified that, in the up-rate scenario, loans would be delivered over the first six months of the stress test and, in the down-rate scenario, over the first three months, at the rates specified in Table 3.

TABLE 3.—MORTGAGE DELIVERIES BY MONTH OF THE STRESS TEST AS A PERCENTAGE OF TOTAL COMMITMENTS

Months	Up-Rate Scenario	Down-Rate Scenario
1	18.75%	62.50%
2	18.75%	25.00%
3	12.5%	12.50%
4	12.5%	0.00%
5	6.25%	0.00%
6	6.25%	0.00%
Total	75%	100%

Finally, OFHEO proposed that the mix of characteristics (type, term, LTV ratio, coupon, geographic location, and credit enhancements) of commitment loans would be based upon the characteristics in loans that were delivered for securitization within the immediately preceding six-month period.

2. Comments and Responses

a. General Comments

Only the two Enterprises commented upon the proposed treatment of commitments. Both Enterprises agreed with OFHEO's decision that all loans delivered under commitments would be securitized. On the other hand, both Enterprises expressed concern that the capital impact of commitments was too great and that the stress test may overstate the risks posed by outstanding commitments. They cautioned that such an overstatement could reduce the use of certain types of commitments.

Freddie Mac stated that OFHEO's approach was probably more complex than is warranted, but, nevertheless, would be operationally workable. However, Freddie Mac also stated that if its recommended changes in the modeling approach to commitments and adjustments to the benchmark loss experience are not made, the Enterprises will have strong economic incentives to reduce the use of longer term commitments and further that ''it is doubtful that commitments could support [NPR2] capital levels.'' Fannie Mae made similar comments, suggesting that ''the proposed regulation's failure to recognize behavioral differences among commitment types may unnecessarily restrict the widespread use of optional commitments.''

In response, OFHEO notes that its decisions about how to model commitments are not intended to promote or discourage the use of one type of commitment over another, or to encourage the use of commitments in general. To the extent that long-term commitments may have a greater capital impact than short-term commitments, that is due to the relative level of risk of each type of commitment. Further, if empirical analysis regarding commitments indicates that the stress test should be modified, OFHEO will consider doing so. However, in the absence of historical data from which to construct a statistical model of commitments, the final regulation includes a few straightforward and conservative decision rules, which reflect the conditions of the stress period and the operation of commitment agreements. These rules make the commitments model easily replicable and the impact of commitments on capital predictable.

b. Remittance Cycle

Freddie Mac pointed out that NPR2 proposes to set the remittance cycle for commitment loans to the shortest period used at each Enterprise, even though some loans delivered and securitized just prior to the start of the stress period might have different remittance cycles. The final rule responds to this comment by modeling the float period (the time between receipt of funds by the Enterprise and remittance to security holders), which is the relevant portion of the remittance cycle for securitized loans.[64] The float period is set using the average float days weighted by UPB for each commitment loan group category in the same proportions experienced by each Enterprise in securitized single family loans that were originated and delivered within six months prior to the start of the stress test.

c. Credit Enhancements

Freddie Mac pointed out that, although commitment loan groups used in the model carried credit enhancements based upon each Enterprise's history for the prior six months, the NPR did not specifically reference credit enhancements among the characteristics of the loan groups. The final rule clarifies that mortgage insurance credit enhancements will be assigned to the commitment loans in the same proportions experienced by each Enterprise in securitized single family loans that were originated and delivered within six months prior to the start of the stress test. OFHEO notes that credit enhancements other than mortgage insurance are not applied to commitment loan groups in the final rule. Given the change to contract-level detail in the modeling of credit enhancements in the final rule, assignment of other types of credit enhancements would have required OFHEO to include speculative assumptions about the terms of future credit enhancement contracts. Including these other enhancements would also have added excessive complexity to the model, given the relatively small number of loans that would be affected.

d. Alternative Delivery Assumptions

(i) Comments

Fannie Mae recommended alternative modeling assumptions that, it asserted, better distinguished between the different types of commitments than those treatments proposed by OFHEO.[65] Fannie Mae suggested that OFHEO erred by treating all outstanding commitments as the same type of contractual arrangement. Specifically, Fannie Mae stated that the specified percentages of loans delivered under commitments (fill rates) ignore the large number of optional commitments and suggested that fill rates of 50 percent in the up-rate and 75 percent in the down-rate would

[64] *See* sections 3.2.2.1, Loan Data and 3.6.3.7.2, Stress Test Whole Loan Cash Flow Inputs, of the Regulation Appendix which require float days as an input.

[65] Fannie Mae's NPR2 comment letter also included an ''Issue Brief'' authored by Ernst & Young LLP, which provided further detail supporting Fannie Mae's recommendations.

be most appropriate. Fannie Mae also asserted that the three- and six-month delivery windows were unrealistically short and that deliveries in both scenarios were too front-loaded, suggesting instead periods of six and twelve months with deliveries spaced evenly across those periods. Fannie Mae further suggested that OFHEO refine the definition of ''commitment'' to reflect different levels of commitment in different agreements, although it did not explain precisely how this refinement should be reflected in the stress test.

(ii) OFHEO Response

OFHEO has studied the alternatives recommended by Fannie Mae and has concluded that they are no more precise or reasonable than those in the proposed regulation. First, contrary to Fannie Mae's assertion, OFHEO did not assume that all commitments were of the same type. Specifying less than 100 percent deliveries in the up-rate scenario is a recognition that some commitments are optional and that sellers under those commitments are not required to deliver all the loans specified in the agreement. Second, OFHEO determined that the front-loaded delivery schedule is appropriate because deliveries under individual commitment contracts tend to be concentrated in the early months of the contract. This decision rule also recognizes that at any point in time outstanding commitments are of differing ages. Some will only have a few days left during which a seller can deliver loans and some will have just recently been executed. Accordingly, outstanding commitments would begin to expire rapidly over the first few months of the stress test. Thus, even if deliveries were made evenly over the course of each individual commitment, the total deliveries would drop off quickly within the first few months of the stress test. Also, mortgage lenders do not enter into mandatory commitments for loans they are not reasonably certain they have in the pipeline and these loans are generally delivered within a few months. Loans under optional commitments also tend to be delivered early, because the commitments become outdated rapidly as the market changes and sellers negotiate new agreements.

OFHEO recognizes that the assumptions suggested by Fannie Mae in regard to both fill rates and delivery schedule are not necessarily wrong or unreasonable. However, in the absence of any data demonstrating the historical or current mix of outstanding commitment types, differences in deliveries under different commitment types, mix of loan types delivered under commitments, or the period of time over which deliveries under commitments actually occur, OFHEO will use the more conservative approach specified in the rule.

e. Mix of Loan Characteristics

Fannie Mae also recommended that OFHEO specify the mix of characteristics for loans delivered under commitments based on the mix of loans in an Enterprise's portfolio, rather than on the mix of recent deliveries. Fannie Mae expressed concern that basing the mix upon recent deliveries might weight one-time purchases of a particular loan type too heavily.

As discussed in detail in NPR2 in response to a similar comment from Freddie Mac on the ANPR,[66] OFHEO has seen no evidence that the mix in the current loan portfolio is a good proxy for the mix of loans delivered under commitments. Neither has OFHEO seen evidence of a one-time purchase so large that it would skew significantly or inappropriately the mix of loans delivered over six months. Also, this decision rule reflects recent changes in an Enterprise's business decisions and, in this sense, is more sensitive to risk than basing the mix on the total loan portfolio. Finally, the mix of loan characteristics has a limited impact on the capital requirement, because the Enterprises bear no interest rate risk on loans delivered under commitments, which are all securitized. For these reasons, OFHEO continues to view the recent deliveries as the best available indicator of the mix of characteristics of loans to be delivered in the stress test. Accordingly, this aspect of the commitments specification has not changed in the final rule.

f. Pair-off Fees

Fannie Mae also criticized the proposed stress test because it did not account for pair-off fees that would be paid on undelivered loans under mandatory commitments in the up-rate scenario. OFHEO has no data from the Enterprises indicating when, how often, or in what amounts pair-off fees are charged and no data indicating what percentage of commitment agreements provide for the payment of pair-off fees. Given the lack of these data, or even data indicating actual percentages of loans delivered under commitments, OFHEO had no basis upon which to include a credit for pair-off fees in the stress test and has not modified the proposed rule to do so.

[66] 64 FR 18165–18166, April 13, 1999.

g. Data

Although the final regulation's commitments specifications are little changed from those proposed, OFHEO views commitments as an area that is worthy of additional study and, therefore, is considering requiring the Enterprises to collect data about commitments that would allow empirical analysis in this area. For example, if the Enterprises had tracked delivery percentages and timing under commitments, a far more precise model, such as is suggested in Fannie Mae's comments, could be constructed. If these data had been tracked by commitment type and length of term, an even more sophisticated model would be possible. Such data and the analysis they would facilitate might provide OFHEO the basis upon which to modify the specifications in the existing commitments model or to develop a more finely-tuned model.

G. Interest Rates

Interest rates are a key component of the adverse economic conditions of the stress test. The ten-year constant maturity Treasury yield (CMT), as specified by the 1992 Act, provides the basis for the severe interest rate stress in the stress test. The stress test also incorporates a number of other interest rates, the levels of which will determine the volumes of mortgage prepayments and defaults; the cost of new debt issues and earnings on new investments; and rates paid or earned on assets, liabilities, and derivative contracts.

The 1992 Act specifies the path of the CMT for ten-year securities (ten-year CMT) for two interest-rate scenarios during the stress period.[67] However, for the determination of all CMT maturities other than the ten-year CMT, the 1992 Act states only that they will change relative to the ten-year CMT in patterns and for durations that are reasonably related to historical experience and are judged reasonable by the Director.[68] For non-CMT interest rates, the 1992 Act simply states that characteristics of the stress period that are not specified will be determined by the Director, on the basis of available information, to be most consistent with the stress period.[69] Therefore, the final rule specifies the CMT yield curves and the spread relationships between CMT series and other interest rates that will determine the levels of all interest rates in the stress test.

[67] 12 U.S.C. 4611(a)(2).

[68] 12 U.S.C. 4611(a)(2)(D).

[69] 12 U.S.C. 4611(b)(2).

1. Proposed Rule

In NPR2, OFHEO proposed that the required changes to the ten-year CMT would occur in twelve equal monthly increments from the starting point for the ten-year CMT, which is the average of the daily ten-year CMT for the month preceding the stress period. As specified in the 1992 Act, the ten-year CMT would then remain at the new level for the last nine years of the stress period.

The proposed rule also established the Treasury yield curve for the stress period in relation to the movements in the ten-year CMT. In the down-rate scenario, the rule specified an upward sloping yield curve during the last nine years of the stress period. In the up-rate scenario, the rule specified a flat yield curve for the last nine years of the stress period, i.e., yields of other CMT maturities are equal to that of the ten-year CMT.

The stress test must project the levels for a number of non-CMT rates that affect the Enterprises' business performance. Some of these key rates are the Federal Funds rate, London Inter-Bank Offered Rate (LIBOR), Federal Home Loan Bank 11th District Cost of Funds Index (COFI), and Enterprise Cost of Funds rates. The proposed rule established these rates using Autoregressive Integrated Moving Average (ARIMA) procedures, a statistical estimation technique for projecting time series. The estimation is based upon each series' historical spread to the CMT with a comparable maturity. In addition, NPR2 specified that in projecting the Enterprise Cost of Funds rates, the stress test would add a 50-basis-point premium after month 12, representing the additional cost of borrowing that might be anticipated if an Enterprise were undergoing financial stress.

2. Comments and Responses

OFHEO received many comments on the NPR2 interest rate specifications from the Enterprises, mortgage industry trade groups, investment banking firms, and a major bank. Some comments criticized the Treasury yield curve specifications, suggesting that other curves would be more consistent with historical averages. Most commenters said the specifications for non-CMTs were unnecessarily complex. Both Enterprises objected to the use of the DRI Agency Cost of Funds rates, suggesting that the quality control for that index was inadequate. These comments are discussed in detail below.

a. Specification of the Flat Yield Curve in the Up-Rate Scenario

(i) Comments

The Enterprises and an investment bank criticized OFHEO's proposal to transition to a flat yield curve in the last nine years of the stress test in the up-rate scenario. These commenters agreed that the yield curve historically tends to flatten or invert immediately after upward interest rate shocks, but they asserted that the yield curve resumes a more normal upward sloping shape during extended periods of stable rates. Both Enterprises questioned OFHEO's analysis of historical yield curve data and submitted studies supporting their conclusions. More specifically, Fannie Mae stated that OFHEO misdirected the analysis by assuming that yields would remain constant during the last nine years of the stress test and that OFHEO based its analysis on regression equations that were misspecified. The Enterprises also argued that the flat yield curve would slow prepayments inappropriately by eliminating any refinancing incentive. Freddie Mac suggested that the flat yield curve distorts the cost of new debt in the stress test by creating inappropriately high refunding costs. Fannie Mae argued that by potentially increasing short-term Treasury yields by more than the increase in the ten-year CMT, the flat yield curve specification imposes more stress than Congress intended in the 1992 Act. No commenter objected to use of the yield curves specified in the down-rate scenario, although Freddie Mac stated that the curve was steeper in the last nine years of the stress period than suggested by historical experience.

(ii) OFHEO's Response

The 1992 Act includes two requirements concerning stress period CMTs other than the ten-year CMT.[70] First, the other CMTs must move in patterns and for durations relative to the ten-year CMT that the Director determines are reasonably related to historical experience. Second, these movements must be judged reasonable by the Director. The second requirement is more general, providing that the resulting yield curves should be reasonable within the context of the stress test and the overall purposes of the 1992 Act.

After reviewing the comments, OFHEO has determined that it should not alter the yield curves specified in NPR2. As mentioned above, the commenters agreed that yield curves tend to flatten when interest rates increase sharply and tend to steepen when rates decline sharply. The regulation reflects this general historical tendency in both interest rate scenarios during the first year of the stress period. Because the magnitude and speed of the stress test changes in the ten-year CMT exceed historical experience, it is reasonable to project that yield curve changes would be unusually large. OFHEO was also guided by the requirement that the ten-year CMT remain constant during the last nine years of the stress period. Such constancy is far different from any historical period. OFHEO has determined that a constant yield curve during the last nine years is the most reasonable and consistent approach, and, as discussed in the preamble to NPR2, best ties capital to risk.

To select the constant yield curves, OFHEO examined historical average yield curves and observed that the curves were consistently flatter the more ten-year CMT yields increased and consistently steeper the more ten-year CMT yields decreased. Given the large size of the yield changes in the stress test, OFHEO selected yield curves that approximated the bounds of historical experience. OFHEO further supported that choice with simple regression equations that illustrated the pattern observed.[71]

Fannie Mae argued that the specified yield curves in both scenarios are the most stressful ever observed. However, OFHEO's analysis of the shapes of historical yield curves indicated that more severely sloped yield curves have occurred than those that OFHEO chose for the stress test. In periods where interest rates have declined sharply, yield curves with slopes steeper than 0.77 were observed. In periods where interest rates rose rapidly, yield curves have frequently inverted. Although these yield curves have not persisted for periods of many years, severe interest rate shocks have also not persisted.

It is important to note that, in addition to historical analysis, the selection of the actual yield curves in the stress test also took into account the role of interest rates in the stress test. In

[70] "Yields of Treasury instruments with other terms to maturity will change relative to the 10-year constant maturity Treasury yield in patterns and for durations that are reasonably related to historical experience and are judged reasonable by the Director." 12 U.S.C. 4611(a)(2)(D).

[71] The constant terms in the regression equations were misreported in the preamble to NPR2 as 0.86. The correct estimates were 0.67 for the full sample and 0.66 for the estimation based on quartile averages. However, the projections of yield curves under stress test conditions were based on the correct coefficients. Further, OFHEO determined upon review that the regression equations were appropriately specified as described in footnote 148 in NPR2. 65 FR 18148, April 13, 1999.

this regard, consistent with the requirement in the 1992 Act that the Director judge interest rates to be reasonable,[72] it is appropriate and reasonable within the context of a stress test to specify yield curves that remain more stressful than the average yield curve. Accordingly, OFHEO has selected curves that have been observed frequently in the past, but, as applied in the regulation, are unusually stressful for an extended period.

The Enterprises argued, in effect, that the flat yield curve adds additional risk to their portfolios in the up-rate scenario of the stress test by raising the cost of short term debt by a greater amount and percent than the increase in the ten-year CMT. They seek an approach that recognizes a discount for short-term debt, which would lower the capital requirement in the up-rate scenario. OFHEO disagrees. The 1992 Act does not suggest that other interest rates should not move more than the ten-year CMT.

For all the above reasons, OFHEO has determined that the most reasonable means of relating the yield curve to historical experience recognizes the general direction of yield curve changes during changing interest rate environments without attempting to fine tune that historical analysis throughout the ten years of the stress period. Accordingly, OFHEO has further determined that, given the design of the stress test, a yield curve that transitions during the first year to a flat curve for the last nine years of the up-rate scenario and to an upward sloping yield curve for the last nine years of the down-rate scenario best meets the dual requirements of the 1992 Act.

b. Specification of Non-Treasury Rates

(i) Use of ARIMA Methodology

Numerous commenters criticized the proposed use of ARIMA models to project non-Treasury rates during the stress period. For a variety of reasons, the commenters all concluded that ARIMA models were too complex and inaccurate to be relied upon to project non-Treasury rates in a stress test. The models were argued to result in volatile and unpredictable projections that would be difficult for parties other than OFHEO to replicate. Freddie Mac recommended that OFHEO project non-Treasury yields based on the average spread over the appropriate CMT for the period two years prior to the beginning of the stress test. No commenter favored the proposed ARIMA approach to projecting non-Treasury interest rates.

[72] 12 U.S.C. 4611(a)(2)(D).

OFHEO agrees that a different method of modeling non-Treasury rates is appropriate. The final rule, therefore, discontinues use of the ARIMA models. Instead, OFHEO will use the average spread between each non-Treasury rate and its comparable maturity CMT for the two-year period just prior to the beginning of the stress test. This approach presents several advantages over use of ARIMA models. First, it is easily implemented, and replicable by parties other than OFHEO. Second, it is far less likely to impose large, erratic and unpredictable swings in interest rate spreads. Finally, it is consistent with the use of a fixed specification of the Treasury yield curve, rather than a varying curve based on a statistical model.

(ii) Proportional and Absolute Spreads

Several commenters suggested that OFHEO consider whether it was more appropriate to project certain non-Treasury rates based upon the historical spreads in basis points between those rates and the corresponding maturity CMT than to project the rates based on their historical proportional relationships.

For nonmortgage interest rates, OFHEO found that proportional spreads correlated better historically than absolute spreads. However, for mortgage rates in the stress test, which are calculated from two-year averages of the Bloomberg indexes for conventional 30-year fixed rate loans and conventional 15-year fixed rate loans, OFHEO found that absolute spreads provided a better correlation.

For these reasons, the final rule continues to use proportional spreads to determine all interest rate series in the stress test, except mortgage rates. In modeling mortgage rates, the final rule bases the calculations upon absolute spreads.

c. Data Sources

Both Enterprises commented that DRI McGraw-Hill's (DRI) Federal Agency Cost of Funds, which is the series used in the proposed regulation to calculate the Enterprise Cost of Funds during the stress period, was inappropriate for that purpose. OFHEO also notes that the DRI series has been discontinued since the publication of NPR2.

Because the DRI series was discontinued, OFHEO has specified a different index for calculating the Enterprises' Cost of Funds. The only commercially available index suitable for this purpose is the Bloomberg Generic Agency Cost of Funds. As an alternative, OFHEO considered developing its own index of the Enterprises' Cost of Funds. OFHEO has determined that developing its own index is the preferable option, because OFHEO has no control over the content, methodology, quality and availability of the Bloomberg index. However, development of such an index will take considerable time and OFHEO will, therefore, utilize the Bloomberg index in place of the DRI index until OFHEO develops a more appropriate index.

3. Yields on Enterprise Debt

a. Comments

A number of commenters, including both Enterprises, objected to the proposed method for calculating the interest rates at which the Enterprises issue new debt after the first year of the stress period. The Enterprises' borrowing rate in NPR2 included the addition of a 50-basis-point premium to the projected Agency Cost of Funds after the twelfth month of the stress period. Some commenters suggested there should be no premium at all on Enterprise debt costs. These commenters suggested that the debt markets would react differently to an undercapitalized Enterprise than to other undercapitalized businesses for varying reasons, including the Enterprises' special Federal status and the confidence that investors in the debt market would have in the regulatory oversight of the Enterprises. Both Enterprises argued that the premium should be applied to all non-Treasury interest rate series rather than only to the Enterprises' debt costs. The Enterprises each submitted studies from consultants that offered a number of reasons to support eliminating the debt premium. Implicit in the Enterprises' comments was an assumption that the economic conditions of the stress period would affect other borrowers as much or more than the Enterprises. One Enterprise suggested that the debt markets would not require a premium, because investors would recognize that the 30-percent multiplier for operations and management risk would never be exhausted. To support these arguments, commenters submitted historical analyses to show that when the spreads between Enterprise debt rates and Treasury yields have widened, other non-Treasury debt spreads have widened as much or more, even at a time when Fannie Mae had negative net worth.

Commenters also pointed out that applying a fixed-debt premium at a fixed point in the stress test does not take into consideration the condition of the Enterprise at the start of the stress test. They suggested that one year into the stress test an Enterprise may appear financially strong to investors and that a debt premium would not be demanded by the market. The debt premium was also criticized for failing to distinguish between premiums on long- and short-term debt. Commenters argued that the markets always demand a larger premium on long-term debt.

b. OFHEO's Response

OFHEO does not agree with the assumption of commenters that investors will be so confident that the Federal government would support Enterprise debt that the debt market will ignore the financial condition of the company. To incorporate such an assumption into the stress test would amount to the modeling of an implied federal guarantee of Enterprise debt. The ''implied'' guarantee is, at most, a market perception and not a legal obligation of the Federal government. There can be no assurance that Congress would act to prevent loss to investors, and market perceptions, therefore, may change. Further, it would be particularly inappropriate to include such an assumption in a stress test designed to ensure that the government is never called upon to deal with a default by an Enterprise. To do so would weaken the regulatory structure on the grounds that the public perceives the structure to be strong-an imprudent course for any regulator.

Similarly, OFHEO disagrees with the argument that the stress test should assume that the market would not demand a premium because the Enterprises have a financial regulator and are subject to stringent risk-based and minimum capital standards. Although OFHEO anticipates that its existence and the capital regulations it issues will create public confidence that the Enterprises will continue to be adequately capitalized and operated safely and soundly, OFHEO will not presume that the mere existence of this regulatory structure would prevent a deterioration in the market for an Enterprise's debt when the Enterprise is undercapitalized. Among other things, the increased regulation of the Enterprises has also imposed clearer capital requirements and greater disclosure regarding their operations—a trend that OFHEO expects to continue. It is, therefore, possible that investors will be more sensitive to capital inadequacies at the Enterprises than they were in the past.

OFHEO was not convinced by arguments that the market would not demand a premium because investors would rely on the implied Federal guarantee or the regulatory structure, and was not persuaded by commenter's arguments, based on sparse historical data, that other spreads would widen by as much or more than those of government sponsored enterprises. Nevertheless, relevant historical data to support a new debt premium are also sparse. There has been only one, relatively brief, period of time in the early 1980s when one of the Enterprises experienced financial stress approaching the magnitude specified in the stress test. The only other similar event involved the Farm Credit system in the mid-1980s. In addition, it is conceivable, as some comments noted, that events that cause a widening of the spread between the Enterprises' debt rates and Treasuries might also cause other spreads to widen. These spreads have an important effect on the value of hedging instruments and some Enterprise asset returns.

In light of these considerations, OFHEO has determined that there is too little historical experience on which to determine definitively whether other spreads to Treasuries would widen as much as the Enterprises' spreads or to base an estimate of how much the Enterprises' spreads would widen. Consequently, OFHEO has decided not to include a premium on new debt in the final rule. The final regulation does, however apply a 50-basis-point call premium to new five-year callable debt. The cost of new debt is a likely area for future research and for refinement of the rule, because assumptions about these various other spreads may comprise an area of significant risk to the Enterprises.

H. Property Valuation

In order to update origination LTVs to the start of the stress test and to account for changes during the stress period, OFHEO proposed property valuation methodologies for single family and multifamily loans. Because these methodologies were different for single family and multifamily loans, comments and responses related to property valuation are discussed separately for single family and multifamily loans.

1. Single Family

In NPR1, OFHEO proposed to use its House Price Index (HPI) to calculate property values for the purpose of determining current LTVs for Enterprise loans as of the starting date of the stress test. For this purpose, OFHEO proposed to use the HPI of the Census Division in which the loan originated along with the related volatility parameters. In NPR2, OFHEO proposed to determine house price growth rates during the stress test using its HPI values from 1984 to 1993 for the West South Central Census Division, the division in which most of the ALMO benchmark states are located,[73] along with the volatility parameters for the Census Division in which the loan was originated.

The HPI utilizes a repeat transactions estimation process based on a stochastic model of individual housing values. The indexes estimated using this process represent a geometric mean. Along with the HPI, OFHEO publishes the factors needed to adjust the indexes from geometric to arithmethic means (the Goetzman correction), an adjustment needed for some applications of the HPI.[74] However, OFHEO proposed to use the HPI without the Goetzman correction in the stress test.

The 1992 Act requires that if interest rates rise by more than 50 percent of the average ten-year CMT for the nine months prior to the start of the stress test, losses must be adjusted to account for general inflation. The stress test proposed by NPR2 implemented this requirement by increasing house prices by the amount the ten-year CMT, after the upward shock in interest rates, exceeds the average ten-year CMT for the nine months prior to the start of the stress period. This amount is compounded over the remainder of the stress period for a cumulative inflation adjustment. The adjustment is applied over the last 60 months of the stress period.[75]

The comments related to the use of the HPI in the stress test and comments on the inflation adjustment are discussed below.

a. HPI Issues

Comments related to the use of the HPI in the stress test focused on four issues—(1) The use of a geometric index instead of an arithmetic index; (2) the restriction of the database to loans financing single family detached properties, where the loans were eventually purchased or guaranteed by the Enterprises; (3) the HPI volatility parameters used during the stress period; and (4) the procyclical effect of the methodology on the capital requirement.

(i) Geometric Mean

The Enterprises objected to OFHEO's decision not to use the HPI without the Goetzman correction for stress test

[73] The West South Central Division includes all of the ALMO states except Mississippi.

[74] A geometric mean of a group of n numbers is the nth root of their product, whereas the arithmetic mean, which Freddie Mac uses in its house price index, is the simple average of the numbers.

[75] *See* section 3.4, Property Valuation of NPR2, 64 FR 18236, April 13, 1999.

purposes. However, NAHB noted that, for the purpose of meeting the requirements of the 1992 Act, OFHEO's index is superior to other house price indexes, including the Conforming House Price Index published by the Enterprises, which uses an arithmetic mean.

OFHEO continues to believe that a geometric index is more appropriate for the stress test than an arithmetic index, primarily because a geometric index approximates a median value, whereas an arithmetic index results in an average value. Because housing values are distributed lognormally (i.e., skewed to the right), the median is a better measure of central tendency for a loan-level analysis, such as that reflected by the single family default and prepayment model, than the average. By definition, the average for a lognormal distribution that is skewed to the right will always lie above the median because the average in effect gives more weight than the median to ''outliers,'' in this case, loans that are experiencing appreciation far in excess of the majority. Therefore, the average will always be higher than the actual appreciation rates experienced by the majority of the individual loans. A geometric index results in values that are far closer to median and therefore gives far less weight to outliers. For the purpose of a stress test, OFHEO does not think it is appropriate to update property values using appreciation rates that are higher than those experienced by the majority of loans. Consequently, the final regulation continues to use the HPI without the Goetzman correction.

(ii) HPI Database

(a) Comments

A number of other commenters asserted that the house price vector used in the stress test is not stressful enough, resulting in losses that are understated relative to the benchmark loss experience, especially for low-LTV loans. These commenters noted that the house prices in the HPI for the West South Central Census Division from 1984–1993 evidence a 12 percent initial decline before increasing, while Moody's, Fitch, and other rating agencies use at least a 30 percent decline before increasing. They assert that this weaker decline in house prices is attributable to the exclusion from the HPI database of transactions involving single family homes that are not detached (i.e., condos, planned unit developments and 2–4 family homes) and the exclusion of foreclosure sales. The result, in the opinion of some commenters, is that the capital requirement is understated and biases are introduced in favor of low-LTV loans and older loans, which result in understated default rates. Some commenters who criticized the use of the HPI recommended that OFHEO use a different house price vector, such as one used by one of the rating agencies, and also calibrate single family default and prepayments rates to the benchmark by LTV ratio. (See further discussion of calibration to the benchmark loss experience in III.I.1.g., Relating Stress Test Default Rates to the Benchmark Loss Experience.)

Freddie Mac and Fannie Mae, in their reply comments, took issue with the comment that the HPI is biased upward because foreclosure sales are not included in the HPI database. Freddie Mac pointed out that, although foreclosure sales are not included in the database, the sale of the foreclosed property in an REO disposition is included if such a transaction results in a mortgage that an Enterprise buys. Freddie Mac further observed that the overall stringency of the stress test depends on whether the default and severity models are appropriately calibrated to the benchmark and that a more severe path of house price appreciation would lower the calibration constant used to ensure that the default and severity models produce credit loss in line with the benchmark loss experience, rather than make the stress test more severe.

(b) OFHEO's Response

OFHEO continues to believe that it is appropriate to use an index based on Enterprise data rather than rating agency assumptions to determine house price growth rates during the stress test. As noted in the ANPR and NPR1, OFHEO believes that the direct correspondence of the Enterprise database to the segment of the housing market served by the Enterprises make that database a more appropriate basis for determining a house price appreciation path for Enterprise loans during the stress period.

OFHEO also believes that the HPI is the most appropriate index available for establishing property values during the stress test, notwithstanding the restriction of the database to transactions involving single family detached homes. OFHEO restricted the database to single family detached loans because it is the dominant mortgage product and because the markets for PUDs, condos and 2–4 family homes have different behavioral characteristics. The impact of their exclusion is likely to be small because the Enterprises buy few of these loans.

OFHEO does not believe that the lack of foreclosure sales in the database makes the HPI unsuitable for use in the stress test. Even if the data on which the HPI is based resulted in an upward bias to house prices that understated default rates relative to the benchmark loss experience, the calibration of the default and severity rates to the benchmark loss experience would compensate for it.

(iii) Stress Test Volatility Parameters

To determine the path of house price appreciation during the stress period, NPR2 proposed to use the HPI for the West South Central Census (WSC) Division from the benchmark period (1984Q1 through 1993Q4), with the volatility parameters for the Census Division in which a loan was originated up to the start of and during the stress period. Although one commenter appeared to support this approach, others expressed concern that it would result in different capital requirements for otherwise identical loans in different Census Divisions. The commenters asserted that this would distort mortgage purchase incentives for the Enterprises and result in inconsistent treatment of consumers and inefficient economic outcomes. The Enterprises also expressed concern that the NPR2 approach, involving quarterly updates to Census Division volatility parameters, would make it difficult to anticipate the risk-based capital requirement and incorporate it into their operations. They urged OFHEO instead to apply fixed volatility parameters associated with the West South Central Census Division during the stress period.

The final regulation adopts the commenters' suggestionn to use the fixed volatility parameters associated with the West South Central Census Division. The final rule uses the West South Central volatility parameters as published in the Third Quarter, 1996 HPI Report, both in updating property values to the start of the stress test and in projecting changes in property values during the stress period.

(iv) Procyclicality

A number of commenters argued that the use of OFHEO's repeat transactions HPI to update LTV ratios for loans as of the start of the stress test may result in volatility that may understate Enterprise capital needs in times of house price ''bubbles'' [76] and possibly exacerbate house price declines. Higher levels of house price appreciation result in a lower probability of negative equity

[76] ''House price bubbles'' refers to the tendency of the rate of house price growth to accelerate before a decline.

(and hence lower default levels), which results in a lower capital requirement. (Conversely, lower levels of house price appreciation result in a higher probability of negative equity and hence higher default levels.) Thus, it was argued, the capital requirement would be lower during boom years and higher during recessionary periods. The commenters asserted that during periods of low or negative rates of house price growth, higher capital requirements would constrain the ability of the Enterprises to buy mortgages, potentially contributing to further housing value declines. To reduce this procyclicality in the capital requirement, the commenters recommended that OFHEO use a two-year moving average of HPI values rather than the HPI value in a single quarter to update LTVs to the start of the stress test.

In their reply comments, both Fannie Mae and Freddie Mac supported the idea that required capital should be high when economic risks are high. Fannie Mae agreed that use of a moving average would dampen the effects of rapid house price movements while still ''relating capital to broad-based and long-term risk.'' Freddie Mac did not support the use of a two-year moving average, citing factors that would mitigate excessive procyclicality. First, it was argued, booms and busts tend to be regional rather than national phenomena, and the Enterprises' portfolios are highly diversified, which limits their exposure to regional downturns and upturns. Second, Freddie Mac asserted that the Enterprises will manage their capital to provide stability in the secondary market for residential mortgages through the business cycle. Lastly, Freddie Mac noted that the minimum capital requirement and discretionary reclassification authority of the Director will ensure that the Enterprises maintain a minimum level of capital.

OFHEO did not adopt the commenters' suggestion to use a moving average of HPI values in the final rule. While a moving average would dampen both upward and downward short-term trends in home values and allow longer-term trends to have greater influence, OFHEO believes that the use of current LTVs determined by the HPI values in the quarter preceding the start of the stress test makes the test more effective as an early warning device. Smoothing the path of house price appreciation by using a moving average would allow an Enterprise to delay building capital needed to meet requirements of the stress test based on actual house price levels at the start of the stress test.

b. Inflation Adjustment

(i) Comments

The Enterprises and several other commenters argued that specifying an inflation adjustment based on the difference between the ten-year CMT after the stress test interest rate shock and the average ten-year CMT for the nine months prior to the stress test and applying the inflation adjustment over the last five years of the stress period results in inflation adjustments that are too low. The Enterprises stated that house prices generally keep pace with inflation under stress scenarios, and recommended that the inflation adjustment be 75 percent to 100 percent of the increase in the ten-year CMT, not just the component in excess of a 50 percent increase in the ten-year CMT, citing studies by consultants hired by Freddie Mac.[77] The Enterprises and some other commenters favored beginning the inflation adjustment as soon as the ten-year CMT is 50 percent above its average yield of the preceding nine months, rather than waiting until the last five years of the stress period. Fannie Mae argued that the intent of the inflation adjustment is that credit losses in the up-rate scenario should be lower than credit losses in the down-rate scenario at least when interest rates increase by more than 50 percent.

(ii) OFHEO's Response

The final regulation makes no change to the inflation adjustment. The assertion that the adjustment should be 75 to 100 percent of the total increase in the CMT is based upon hypothetical models and conjecture regarding the macroeconomic nature of such interest rate increases. These hypothetical models and presumed relationships among variables would result in inflation adjustments that would greatly reduce the credit stress in the up-rate scenario. As discussed above, many commenters have asserted that house prices are not stressful enough compared to those considered stressful by the rating agencies, which specify house price drops of 30 percent of more.

[77] Macroeconomic Advisers estimated the impact on home prices of the range of inflation outcomes using a structural model of housing sector. *See* Macroeconomic Advisers, LLC, ''House Prices under Alternative Interest Rate Paths'' (January 18, 1999). At the request of Freddie Mac, Michael Darby analyzed the economic scenario most consistent with the stress period and concluded that the inflationary environment that would be most consistent with the interest rate path described in the 1992 Act would result in an inflation adjustment 75 percent as large as the increase in interest rates. *See* Michael Darby, ''Consistent Macroeconomic Conditions for a Risk-Based Capital Stress Test'' (June 6, 1997).

The 1992 Act recognizes that high interest rate environments are often characterized by high levels of general inflation that would exert upward pressure on house prices and mitigate some of the price decline that results from the interest rate shock. For this reason, an additional inflation adjustment for large increases in interest rates is required. However, this requirement should not be interpreted as implying that house price growth rates should increase in the full amount of the increase in interest rates. Economic conditions that drive stressful scenarios may cause house prices to deviate from the rate of general inflation for extended time periods. Typically, the immediate impact of interest rate increases is to dampen housing demand, which results in declining housing prices. Declining house prices discourage new construction, but the supply adjustment proceeds quite slowly as the existing housing stock deteriorates. The supply of land cannot adjust, so higher interest rates would continue to be associated with lower land values. Thus, it would not be unreasonable to observe a prolonged period of time in which the price of housing deviates sharply from other prices. For example, the crisis in the oil markets in the early 1980's caused substantial house price declines of approximately 12 percent in the West South Central Census Division during a period when the Bureau of Labor Statistics Consumer Price Index (CPI) rose by 19 percent. After housing prices in that area turned upward in 1989 and rose through 1993, they were only two percent higher than a decade earlier, while the CPI had risen 44 percent.

Lastly, an adjustment to house prices such as that recommended by the Enterprises would negate the credit stress of the benchmark loss experience. OFHEO believes that this is not consistent with Congressional intent and does not agree that the purpose of the inflation adjustment was to ensure that losses are greater in the down-rate scenario than in the up-rate scenario.

2. Multifamily Loans

For multifamily loans, OFHEO did not propose to use the HPI or any other repeat-sales or repeat-transaction index to update property values because of the inadequacies of any available property valuation indexes. To overcome this lack of a property valuation index, OFHEO proposed to use an earnings-based method to update property values and income. OFHEO proposed to base the property value on property net operating income (NOI) divided by a capitalization rate, which discounted the expected earnings stream while holding property-specific characteristics constant.

OFHEO proposed to update property NOI using expected rent growth and vacancy rates. Rent growth was derived from the rent of primary residence component of the CPI and multifamily vacancy rates were taken from the rental property vacancy rate series published by the Bureau of the Census (Census Vacancy Series). Because Enterprise purchases of multifamily loans are heavily concentrated in Metropolitan Statistical Areas (MSAs), MSA indexes were used, where available. However, the CPI rent index is only available for one MSA in the ALMO region during the benchmark period (1984–1993) and the Census Vacancy Series covering the ALMO region were not available prior to 1986. Therefore, in order to capture the economic conditions affecting multifamily loans in the ALMO benchmark loss experience, OFHEO turned to non-governmental sources of data published by the Institute for Real Estate Management (IREM). OFHEO used statistical relationships between IREM and CPI data and IREM and rental vacancy data to create government-equivalent series for the ALMO benchmark region and time period. Volatility estimates for rental rate inflation and vacancy rates were used to calculate the dispersion of multifamily property values, in much the same way volatility measures for the HPI series were used to measure dispersion of property values for single family loans.

a. Comments

Numerous comments criticized the proposal to update property values using the proposed capitalization rate model. Only Freddie Mac commented upon the specific choice of indexes for the projection of multifamily rents and vacancies in the stress test. Freddie Mac criticized OFHEO's proposal to utilize the combined CPI and IREM rental indexes as indicative of economic conditions in the benchmark region and time period, citing the relative paucity of multifamily data from the ALMO region in the relevant time frame. Freddie Mac noted that the proposed rule created little stress for multifamily loans, because it resulted in substantial increases in collateral values during the stress period. Fannie Mae likewise noted that the proposed model resulted in increases in property values, contrary to Fannie Mae's own experience in the southern California recession from 1991–1995, when property values declined significantly. Despite their criticisms of the property valuation component of the multifamily model, neither Enterprise suggested changing the method of computing rent growth or vacancy rates for the benchmark region and time period. Instead, they suggested other changes to the model, which included dropping any updating of property values during the stress period.

b. OFHEO Response

The comments criticizing the proposal to update property values are discussed in III.I.3.a.i., Negative Equity and Current LTV Variables, but for present purposes it is sufficient to note that OFHEO has decided not to update multifamily property values in the stress test. Nevertheless, the rental and vacancy indexes continue to play a key role in modeling changes in NOI and have a material impact on the debt service coverage ratio, a key variable in the revised multifamily default model. Because of the importance of these indexes in determining the values for this variable, OFHEO believed it important to consider certain modifications in the computation of these indexes, as discussed below.

After additional analysis, OFHEO found a better proxy for the rental growth rates in the ALMO benchmark region and time period than the government-equivalent series created from IREM data. That series is replaced in the final rule with the population-weighted (1990 Census) average of monthly rent growth rates [78] of Metropolitan Statistical Areas (MSAs) in the West South Central Census Division. CPI indexes are available for two Consolidated MSAs (CMSAs) and one MSA in that region—the Dallas/Fort Worth CMSA, the Houston/Galveston/Brazoria CMSA, and the New Orleans, MSA. OFHEO has found the Texas MSAs to be more reflective and representative of the stressful real estate market in the ALMO region during the benchmark period than the IREM rental data.

Because the rent growth and vacancy rates are used together in the stress test to determine NOI, OFHEO further determined it necessary to use a method consistent and compatible with the rent growth computation to compute the vacancy rates for the ALMO benchmark region. Therefore, in the final rule, ALMO benchmark region vacancy rates are modified from NPR2 in much the same manner as the rent price indexes. Like the corresponding rent price indexes, ALMO benchmark region vacancy rates are calculated using the population-weighted (1990 Census) average of annual vacancy rates for all the MSAs in the West South Central Census Division. Vacancy rate data are available for the Dallas, Houston, and Ft. Worth, Primary MSAs (PMSAs) and the New Orleans, San Antonio, and Oklahoma City, MSAs for 1986 forward. To create vacancy rate data for the ALMO benchmark region and time period for the first two years of the stress test, the ratio of the rental vacancy rates of the ALMO benchmark region and time period to U.S. rental vacancy rates for 1986 (16.8 percent versus 7.3 percent) was assumed to hold in 1984 and 1985. That ratio was applied to the U.S. rental vacancy rate in 1984 and 1985 to estimate vacancy rates in the ALMO benchmark region in those years.

These changes to the stress test rent growth and vacancy rates make the multifamily model more consistent with the single family model, because both models now use the same Census Division as a proxy for the property valuation indexes in the benchmark region and time period.

I. Mortgage Performance

In order to determine how mortgages would perform under the stress test, NPR2 proposed econometric models to simulate conditional rates of default, prepayment, and loss severity for each month of the stress period.[79] To reflect the significant differences in the nature of single family loans and multifamily loans, NPR2 proposed somewhat different models for single family and multifamily loans. Consequently, the comments and responses related to mortgage performance are discussed separately for single family loans and multifamily loans.

1. Single Family Mortgage Defaults and Prepayments

To account for the interaction of default and prepayment,[80] NPR2 proposed jointly estimated models of default and prepayment for three categories of loans. To reflect differing behavioral characteristics of these loans, NPR2 proposed three separate pairs of default and prepayment equations for

[78] Due to the extreme volatility of monthly changes in MSA rental indexes, monthly rent growth was calculated as the twelfth root of the year over year change in the rental indexes for each MSA. Due to different base years, population-weighted averages of the resulting MSA rent growth rates were taken to compute benchmark loss experience rent growth.

[79] The term ''default rate'' is used hereafter in this document to refer to ''conditional default rate,'' unless otherwise specified. The term ''conditional default rate'' refers to the percentage of loan principal outstanding at the start of a period that will default during that period.

[80] Default and prepayment represent options that borrowers choose between when they stop making regular monthly payments on a mortgage. The likelihood of one option being chosen affects the likelihood of the other being chosen.

30-year fixed rate mortgages (30FRMs), adjustable rate mortgages (ARMs), and all other types of single family products (Other SF Products). All three models treat the default and prepayment decisions as options, and they were jointly estimated using the multinominal logit statistical estimation method. The explanatory variables used in the proposed default equations for all three models were age, age squared, LTV at origination, probability of negative equity, occupancy status, and burnout.[81] Product type was also used as a variable in the Other SF Products Model to account for the different default behavior of the different types of products. The explanatory variables used in the proposed prepayment equations were age, age squared, LTV at origination, probability of negative equity, occupancy status, burnout, relative spread, the slope of the yield curve, season of the year (average effect), and relative loan size. For the Other SF Products Model, an additional variable, product type, was used to take into account the differences in prepayment behavior of the various types of products.

In order to reasonably relate default rates to the benchmark loss experience, OFHEO proposed to use a single calibration constant to calibrate the default function to the benchmark loss experience, so that under interest rates associated with the benchmark loss experience, the stress test would project ten-year cumulative default rates for a pool of loans with the characteristics of the benchmark sample that are comparable to the ten-year cumulative default rates of the benchmark loss experience. A similar calibration was made for loss severity rates.

Comments on these models are discussed below by topic.

a. Modeling Approach

The Enterprises found the joint modeling approach to be appropriate and ''essentially sound.''[82] Although the Enterprises had specific concerns about the models, they suggested that, rather than revising their specification or reestimating them, OFHEO could address their concerns by other model adjustments, discussed below in this section by topic. A number of other commenters questioned the joint modeling approach, primarily because it explicitly reflects the potentially offsetting effects of interest rate and credit stresses. Some of these commenters suggested that a better approach would be to evaluate the capital impacts of credit and interest rate risk separately. GE Capital and MICA expressed concern that OFHEO's model understates losses relative to the benchmark, produces inconsistent loss rates in the up- and down-rate scenarios, and permits the Enterprises to overcompensate in hedging one type of risk to offset another type of risk.

GE Capital and MICA proposed two alternative approaches to address their concerns, both of which involved elimination of the proposed default and loss severity calibration constants, adding new LTV-based calibration constants, and substituting Moody's triple-A regional home price decline for the West South Central HPI during the stress period. The first approach would calibrate the model to the benchmark using interest rates associated with the down-rate scenario. The other would calibrate the model using the interest rate path associated with the benchmark loss experience with a small prepayment calibration for high LTV loans.

OFHEO continues to believe that a joint approach to single family mortgage performance is both consistent with statutory direction and appropriate for regulatory purposes. The 1992 Act contemplates the calculation of a risk-based capital requirement based on interest rate and credit stresses experienced simultaneously. The sum of the effects of each experienced separately is not the same as the effects of the two experienced together. The 1992 Act also requires that stress test losses be reasonably related to the benchmark loss experience. OFHEO's model achieves this by calibrating stress test losses to the benchmark loss experience using the interest rates of the benchmark period and house price growth rates of the benchmark period in the West South Central Census Division, which includes most of the states of the ALMO region. Substituting the Moody's house price path for the house price path of the benchmark period and calibrating the mortgage performance models using an interest rate path other than that of the benchmark period would sever the ''reasonable relationship'' of stress test losses to benchmark loss experience. The final rule does, however, eliminate the single calibration constants and apply LTV-specific calibration.constants. These issues are further addressed by the discussions that follow.

b. Data Issues

The models proposed in NPR2 were estimated using all or a random sample of all historical data the Enterprises had available for loans they purchased and retained or securitized in the years 1979–1995, with origination years from 1979–1993.[83] This dataset had certain limitations. It did not, for example, include the last paid installment date for Freddie Mac defaulted loans,[84] or any data for loans securitized under Fannie Mae's swap program. In addition, it did not reflect loan performance for most of the 1990's. In spite of these data issues and their relationship to some of the concerns expressed about the default and prepayment models, commenters generally agreed that OFHEO need not reestimate the models proposed in NPR2 using a more up-to-date and more complete historical data set and should not further delay the final rule to do so.

Since the comment period closed, the Enterprises have provided updated and improved data to OFHEO. Working with this new data, OFHEO determined that certain model shortcomings, some identified by commenters and some by OFHEO, were best addressed using this more recent dataset. Consequently, OFHEO reestimated the single family models using ten percent random samples from a dataset comprised of loans that were originated in the years 1979–1997 and acquired by the Enterprises in the years 1979–1999. In addition to significantly increasing the number of loan observations, the new dataset remedies several data deficiencies noted in NPR2. The dataset includes the last paid installment date for both Enterprises and Fannie Mae securitized loan data from 1991-forward. OFHEO's testing of various model specifications using this updated dataset revealed that several variables that previously demonstrated explanatory significance were no longer statistically significant predictors of default, and these variables were dropped from the estimation of the model. In addition, other specifications of the models were changed slightly to address commenters' concerns. These changes are discussed below by topic.

[81] Season of the year and relative loans size were used in the estimation of the default equations, but omitted in the simulation to achieve average seasonal effect and average loan size.

[82] According to Fannie Mae, ''the level of detailed econometric modeling of loan performance is unmatched among risk-based capital regulations applicable to financial institutions.''

[83] The ARM equation used all available data; the fixed-rate 30-year and other single family products models used ten percent random samples.

[84] In NPR2, OFHEO noted that information was not available from Freddie Mac on the last-paid installment date for defaulted loans in the historical data used to estimate the model and that the date of disposition of a foreclosed property had been used for Freddie Mac's loans. The last-paid installment date was used for Fannie Mae, 64 FR 18174, April 13, 1999.

See also III.I.1.q, Summary of Changes in this section.

c. Mortgage Age

The single family default and prepayment equations proposed in NPR2 specified the age variable as a quadratic function—that is, each equation contained two continuous age-related variables, age and age-squared. MICA and GE Capital suggested that the proposed treatment of loan age results in the understatement of default rates on ''seasoned loans'' (loans outstanding for a year or more).[85] Using MICA data and extrapolating what they characterized as ''benchmark loss experience default rates for seasoned loans'' from information about the benchmark loss experience published in NPR1, these commenters inferred that the stress test default rates were understated relative to the benchmark loss experience, especially for high LTV loans, both ''seasoned'' and newly originated. They also pointed out that industry data shows conditional default rates remaining constant or even continuing to rise after a loan reaches 4.5 years of age, rather than conforming to the shape of a quadratic function. Two other commenters suggested that OFHEO use standard aging curves for mortgage default and prepayment in its stress test instead of specifying age as a quadratic function.[86] In contrast, Fannie Mae stated its belief that OFHEO's ''model should capture the relative performance of both (seasoned and unseasoned) loans.''

After considering the issue raised by the comments, OFHEO concluded that a categorical mortgage age variable would account for age-specific differences in conditional rates of defaults and prepayments in Enterprise data better than the continuous variables, age and age squared. Consequently, the final rule treats age as a categorical variable with nine age categories-six that correspond to each of the first six years of a loan's life (when defaults and prepayments tend to change rapidly) and three additional categories representing loans aged seven to nine years, ten to twelve years, and older than twelve years.

d. Relative Spread (Mortgage Premium Value)

In NPR2, OFHEO proposed to use relative spread—the difference between the coupon rate on a loan and the current market rate, divided by the coupon rate—as an explanatory variable in the prepayment equations. Relative spread is a proxy for ''mortgage premium value,'' the value to a borrower of the option to prepay and refinance. Mortgage premium value is an important factor in determining prepayment rates. When the borrower's rate is higher than the market rates, there is an incentive to prepay. OFHEO recognized in NPR2 that there is a theoretical basis for also using mortgage premium value as a variable in default equations. However, OFHEO did not include relative spread as a variable in default equations, but relied instead upon the burnout variable, which reflects whether a borrower has passed up an earlier opportunity to refinance at favorable interest rates, to measure the influence of interest rates on default.[87]

(i) Comments

Both Enterprises asserted that the proposed default equations do not adequately capture the influence of interest rates on the default rate, leading to an overstatement of losses in the up-rate scenario. According to the Enterprises, the proposed stress test does not capture the historically inverse relationship between interest rates and conditional default rates. That is, conditional default rates tend to decline in rising interest rate environments and rise in declining interest rate environments.[88] Neither Enterprise recommended the use of a mortgage premium value in the default equations, but both Enterprises asserted that failure to take the ''mortgage value effect'' into account resulted in an overstatement of credit losses in the up-rate scenario. Although they recognized that the burnout variable can partially explain why borrowers with loan rates higher than current market rates might be more likely to default than borrowers with loan rates lower than market, the Enterprises believe that the burnout variable does not adequately capture the relationship between defaults and changes in interest rates. As an alternative to using mortgage premium value as a variable in the default equations, Fannie Mae suggested that OFHEO specify an earlier and larger inflation offset or adjust up-rate default rates by a constant multiplicative factor of 0.7. Freddie Mac noted that precise measurement of mortgage value effect is very difficult in the extreme up-rate scenario of the stress test, but agreed that ignoring mortgage value effect resulted in very conservative default rates in the up-rate scenario.

(ii) OFHEO's Response

The inclusion of a mortgage premium value (relative spread) variable in default/prepayment models is consistent with a pure option theory of borrower behavior. In any month, borrowers can be thought of as having an option to default and an option to prepay. The decision to exercise or not exercise either of those options would depend partly on the mortgage premium value. The relevance of the mortgage premium value is based on an implicit assumption that a borrower would be able to replace the existing mortgage with a new one at current market rates. That assumption is generally justified in the case of prepayments, but not in the case of defaults. Accordingly, OFHEO decided not to include a mortgage premium variable in the default equation.

OFHEO disagrees with the Enterprises' view that the relationship between default rates in the two different interest rate scenarios is inappropriate. Those differences reflect the combined effects of very different prepayment rates and of different conditional default rates, which are affected by the burnout variable and the inflation adjustment to house price growth in the up-rate scenario. Each of these effects is properly measured, consistent with statutory requirements. The Enterprises' assertion that there are other ways that interest rates should affect default rates is not adequately supported. Any relationships between interest rates and default rates not accounted for by the factors that are incorporated in the stress test may reflect past correlations between interest rates and such factors as unemployment rates or underwriting practices (which OFHEO has determined should not be incorporated in the stress test) or correlations between interest rates and inflation rates in a way that is inconsistent with the specific provision of the 1992 Act describing how the relationship between interest rates and default rates should be accounted for.

[85] The commenters use the term ''seasoned'' as it is commonly used in the trade to mean loans that are not newly originated, rather than in the statutory sense of changes in LTV ratios over time.

[86] The commenters did not define ''standard aging curves.''

[87] *See* 64 FR 18132, April 13, 1999.

[88] Freddie Mac attributes this phenomenon to two factors: burnout and mortgage value. However, as Freddie Mac also points out, their separate effects are difficult to disentangle. Burnout refers to the adverse selection that occurs in a declining interest rate environment as many borrowers who can qualify for refinancing do so, leaving the remaining borrowers, many of whom cannot quality for refinancing because of poor credit or poor financial condition, with a higher conditional probability of default. In a declining interest rate environment the mortgage will have a premium value (relative spread will be positive). Borrowers who are able to prepay benefit from doing so, and those who are unable to prepay will have a higher conditional probability of default.

e. Burnout

The ''burnout'' variable reflects whether a borrower has passed up an earlier opportunity to refinance at favorable interest rates. It captures the tendency of the most responsive and creditworthy borrowers to prepay first, leaving a remaining sample of borrowers with a lower prepayment probability and higher default probability. The burnout function specified by OFHEO in NPR2 was a simple binary function; the borrower either missed prepayment opportunities over the prior eight quarters or did not.

(i) Comments

Commenters criticized the burnout specification as inadequate to capture the complex relationships between the current LTV, the economic environment, and the burnout phenomenon. In addition, commenters asserted that a binary function can cause large and sudden increases in conditional default rates on new loans in the quarter in which it is introduced, resulting in significant variability in the capital requirement. Fannie Mae attributed the sudden increases in conditional default rates to the combination of the binary function of the burnout variable and the large coefficient (weight) assigned to it. To remedy this, Fannie Mae suggested that the impact of burnout on defaults should be delayed until two years into the stress period and ''smoothed out'' by phasing in its effect over eight quarters. Still others recommended that OFHEO respecify the variable to phase in the burnout effects over a range of interest rates and over a longer period, eliminating the abrupt transition to burnout status that creates potential variability of the capital requirement.

(ii) OFHEO's Response

The final rule does not respecify the burnout variable over a range of interest rates or a longer period, or delay consideration of burnout until two years into the stress period, as suggested by commenters. The final rule does, for newly originated loans, phase in the effect of burnout once it is detected. Burnout is detected if the market rate is 200 basis points below the coupon rate in any two quarters out of the first eight quarters of loan life. Once burnout is detected, its effect is phased in over the first eight quarters after origination by multiplying the default and prepayment weights associated with burnout by an adjustment factor less than one. The adjustment factor is zero in the first two quarters of the loan's life, 25 percent in the third and fourth quarters, 50 percent in quarters five and six, 75 percent in quarters seven and eight, and 100 percent thereafter. For example, if rates drop by 200 basis points for the two quarters immediately after a loan is originated, that loan, if not prepaid, would be considered burned out in the third quarter of its life. Rather than applying the full effects of burnout suddenly, 25 percent of the default and prepayment weights associated with burnout would be applied in the stress test for those quarters corresponding to the third and fourth quarters of the loan's life, 50 percent in the fifth and six quarters of the loan's life, and so forth. This change will make the transition to burned-out status less abrupt for newly originated loans.

f. Occupancy Status

Occupancy status is used as an explanatory variable in the single family default and prepayment equations proposed by NPR2. However, the proposed stress test uses a single coefficient that reflects the average occupancy status across all loans, resulting in a specification that investor properties compose the identical fraction of all types of Enterprise mortgages, regardless of their characteristics.

This simplification was criticized by both Enterprises as not reflective of reality. They noted that investor loans have substantially lower LTV distributions than owner-occupied properties, and that 2–4 unit properties, which were assigned to the owner-occupied loan groups in the proposed regulation, exhibit characteristics more similar to investor properties. They suggested that OFHEO use occupancy status as a classification variable in forming stress test loan groups, use the coefficients estimated from the models or assign investor-owned properties a more appropriate multiplier, and allocate investor properties to their proper LTV categories. They also suggested that two-four unit properties and second homes be assigned to the investor-owned loan groups.

OFHEO did not adopt the commenters suggestion to use occupancy status as a classification variable because it would have doubled the number of loan groups and increased the time required to calculate the risk-based capital requirement significantly. However, the final rule responds to commenters' concerns by adjusting the model coefficient for each loan group by a fraction reflecting the actual percentage of investor-owned loans in that loan group, rather than using a single fraction reflecting the average occupancy status across all loans in the Enterprise portfolio. The final rule adopts the suggestion to assign 2–4 unit properties and second homes to the investor-owned percentage.

g. Season of the Year and Loan Size

One commenter noted that season of the year and loan size [89] were used as explanatory variables in the estimation of the model, but not in the stress test simulation, and that unemployment was not used as a variable in either. The commenter urged OFHEO to re-estimate the model without the season variable, include employment as a variable, and conduct further research on the relationship between loan size and probability of prepayment and default, stating that the size of the UPB has proved an important factor influencing the likelihood of prepayment.

As explained in NPR2,[90] season of the year and relative loan size were used in estimating the model but excluded in the simulations to achieve an average size and average seasonal effect. Using a specification for seasonality other than an average seasonal effect in the default simulation would have created quarterly volatility in default rates with no particular safety and soundness benefits. With respect to relative loan size, the models OFHEO estimated for NPR2 demonstrated that larger loans tended to have faster prepayment speeds, but the effect on default was small and inconsistent. Furthermore, loan size is not needed to make the distinctions required by statute. Weighing these factors, OFHEO concluded that using a specification other than average loan size in default simulations would have resulted in complexity not warranted by the additional benefit that would be derived.[91] Finally, OFHEO did not include the employment rate as an explanatory variable because the stress test includes only macroeconomic variables that are specified by the 1992 Act and employment rate is not among them. Furthermore, as noted in NPR2, the effect of macroeconomic variables such as unemployment are captured through the process of relating the stress test to the benchmark loss experience.[92]

In the course of testing different specifications of the re-estimated model, OFHEO found that these variables were

[89] OFHEO used relative loan size in estimating the model. Relative loan size is the ratio of the original loan amount to the average-sized loan purchased by the Enterprises in the same state and in the same origination year.

[90] 64 FR 18134–35, April 13, 1999.

[91] Including relative loan size as a classification variable would have resulted in a sevenfold increase in the number of loan groups.

[92] 64 FR 18135, April 13, 1999.

not statistically significant as predictors of default. Consequently, in the final rule, seasonality and loan size are not used in the estimation of the default equations. However, they remain significant predictors of prepayment and continue to be used in estimating prepayment equations. In the prepayment simulation, season of the year continues to be omitted to achieve average seasonal effect, but relative loan size is used as an explanatory variable to predict prepayment.

h. Relating Stress Test Default Rates to the Benchmark Loss Experience

Many commenters, including the Enterprises, asserted that the stress test overstates default rates on high-LTV loans; some commenters asserted that it also understates default rates on low-LTV loans. This effect was attributed to using a single calibration constant for all single family loans rather than calibrating each LTV category to the benchmark loss experience. One commenter suggested that a single calibration constant will result in an incorrect forecast of credit losses for any mix of business that differs from the mix in the benchmark loss experience cohort of loans. The commenters recommended calibrating to the benchmark loss experience by LTV category. In addition, Fannie Mae suggested that OFHEO adjust default rates on higher LTV loans to below those of the benchmark loss experience to reflect improved underwriting.

The final rule addresses the commenters' concerns by calibrating defaults to the benchmark loss experience by LTV category rather than using a single calibration constant. The benchmark default rates by LTV category to which stress test defaults are calibrated are set forth in Table 4.

TABLE 4.—ALMO BENCHMARK DEFAULT RATES BY LTV AT ORIGINATION

LTV Category	Default Rate
0 < LTV <= 60	2.2%
60 < LTV <= 70	3.5%
70 < LTV <= 75	7.9%
75 < LTV <= 80	9.4%
80 < LTV <= 90	16.4%
90 < LTV	26.4%

OFHEO did not adopt Fannie Mae's suggestion to adjust default rates on higher LTV loans to below the benchmark loss experience in order to reflect improved underwriting because, as explained in NPR2,[93] to do so would be inconsistent with the statutory direction to subject current books of business to the credit stress of the benchmark loss experience.

i. Adjustable Rate Mortgages (ARMs)

(i) Comments

Some commenters asserted that the proposed ARM default model is insensitive to payment shock and consequently understates defaults. ''Payment shock'' refers to the increased likelihood of default or prepayment when the interest rate on an ARM loan increases and the decreased likelihood of default or prepayment (sometimes called ''payment benefit'') when the interest rate decreases.

(ii) OFHEO's Response

OFHEO agreed with the commenters that adding a payment shock variable would enhance the ARM model. In the course of making this change, OFHEO discovered that a data issue needed to be addressed to remove a potential bias in the re-specified ARM model. Specifically, Freddie Mac has not been able to provide historical data with sufficient computational details (such as identification of the ARM index and rate or payment caps) for ARMs that defaulted or prepaid before 1995, and Fannie Mae has captured its historical data in such a way as to make the computational details for many of that Enterprise's ARM products difficult to model and in some cases ambiguous. The lack of computational detail in the available data results in an underrepresentation of ARM defaults and prepayments among records with these details. To address this issue, OFHEO has modified the treatment of ARM loans in the final regulation as described below.

The final rule respecifies the ARM model for default and prepayment rates as a multinomial logit model using an estimation dataset that pools 10 percent random samples of long-term ARM (original terms of more than 20 years) and 30FRM loans that were originated in the years 1979 through 1997 and acquired in the years 1979 through 1999. This methodology is similar to the methodology used to model 15FRM loans, balloon loans, and other single family mortgage products. This approach allows the sample to be drawn from all available data with no underrepresentation of defaulted and prepaid ARM loans.

The revised ARM model captures average differences in default and prepayment performance for ARM products relative to 30FRM loans while controlling for risk factors common to both types of loans. The respecified ARM model includes the same set of explanatory variables as the respecified 30FRM default and prepayment models, along with three additional variables (described below) unique to ARMs. Some of the explanatory variables common to both models, such as probability of negative equity, burnout, and relative spread, were approximated for ARM products because the information needed to replicate historical ARM coupon rate adjustments and mortgage payment adjustments was not available in the historical dataset. For example, the probability of negative equity was based on the UPB amortized as if the loan rate were fixed at the original rate, and relative spread and burnout were based on the differences between the original loan rate and the current market rate for 30FRM.

For these reasons, the effect on loan performance of subsequent ARM rate and payment adjustments is reflected in the respecified ARM model through the use of three additional explanatory variables unique to ARM products—a binary ARM product variable (which simply indicates whether the loan is an ARM product or not), a payment shock variable, and an initial rate effect variable (which captures the loan performance effects of ARM teaser rates in the first three years of a loan's life).[94] Computationally, the payment shock variable captures the effects of the interaction between the ARM product variable and relative spread. OFHEO believes that this serves as a reasonable proxy for payment shock. Similarly, the initial rate effect variable captures the interaction between the ARM product variable and the first three loan age categories, representing loan age up to 3 years. All three new variables are used in both the default and prepayment equations in the respecified ARM model.

Because the payment shock variable is defined in terms of the relative spread between the initial rate and market rate, the coefficients (weights) for the payment shock variable can be interpreted as ''ARM adjustments'' to the coefficients for relative spread estimated from pooled 30FRM and ARM data. Similarly, the coefficients for the initial rate effect variable can be interpreted as ARM adjustments to the first three age coefficients, which are

[93] 64 FR 18118–18119, April 13, 1999.

[94] Even when market interest rates are not rising, teaser rates (below market initial rates) can cause payment shock effects in ARMs as the low initial rate adjusts to the market rate.

also estimated from the pooled data. The ARM product variable coefficient can be interpreted as a fixed effect that further distinguishes ARM product performance from that of the pooled loans in the dataset.

All variables in the final ARM model were found statistically significant with reasonable interpretations for all variable weights. The initial rate effect, which captures teaser rate effects, shows an increase in the probability of default for ARMs during the first three years of the loan term relative to the remainder of the loan term. Finally, the payment shock variable predicts relatively higher ARM default and prepayment rates in an up-rate scenario as monthly payments rise, and relatively lower ARM default and prepayment rates in a down-rate scenario as monthly payments decline.[95]

j. Credit Scores

Several Wall Street firms commented that the failure of the default specification to take credit scores into account is inconsistent with the goal of the stress test and suggested that OFHEO elicit proposals from the Enterprises to incorporate credit scoring in the risk calculation. Other commenters, including one of the Enterprises, supported OFHEO's decision not to incorporate credit scores in its mortgage performance models at the current time, but suggested that OFHEO monitor the composition of mortgage credit scores to assure that OFHEO's default projections continue to reflect the credit quality of Enterprise mortgages.

The final regulation does not take credit scores into account. Although borrower creditworthiness is not among the loan characteristics required by the 1992 Act to be considered, as more data becomes available on the predictive validity of credit scores, OFHEO will consider whether credit scores can be taken into account in a way that would improve the stress test.

k. Additional Risk Characteristics

Some commenters suggested that the failure of the model to recognize the additional risk characteristics of loans such as subprime, ''Alternative A,'' manufactured housing, and home equity loans could result in inadequately capturing the risk in Enterprise portfolios if these types of loans comprise a significant portion of the portfolio. One commenter suggested adding a surcharge to the risk-based capital calculation for second mortgage lending and subprime lending because of higher levels of fraud and collateral valuation issues encountered in such lending.

The final regulation makes no changes in the proposed regulation to explicitly take into account unique features of such loans. However, when OFHEO determines that a loan has such unusual features or risk characteristics that it is essentially a different product from similar loans for which a treatment is specified, and that the specified treatment does not adequately reflect the risk to the Enterprises, the Director has the discretion to treat such loans as new activities subject to section 3.11, Treatment of New Enterprise Activities, of the Regulation Appendix.

l. Aggregation of High LTV Loans

The proposed stress test groups all loans with LTVs over 90 percent into the same LTV category. One commenter stated that this aggregation resulted in a prepayment rate that is too high for the category and suggested that distinctions should be made among 95 percent, 97 percent and over 97 percent LTV loans. The final regulation does not adopt this suggestion because there are too few observations of over 90 percent LTV loans in the historical database to construct a reasonable model for these high-LTV loans. In developing the stress test OFHEO sought to achieve a balance between operational workability and precision. Striking such a balance necessarily involves some grouping of sparsely populated categories. When more data become available, OFHEO will consider making finer distinctions.

m. Structured Mortgages

The proposed stress test does not differentiate between a first mortgage made coincident with a second lien (together, a structured loan) and one without. A number of commenters noted that failure to distinguish loans based on this characteristic understates the true credit risk and thus understates the required capital for structured loans.[96] Commenters suggested that the default frequency for structured mortgages should be based on the current LTV of the combined loans.[97] However, Freddie Mac argued that, given current industry data practices, there is no reliable way to distinguish an 80–10–10 mortgage[98] from other 80 percent LTV mortgages and that the increased credit risk of 80–10–10 loans is offset by improvements in credit scores and other credit risk factors.

OFHEO recognizes that there may be a risk distinction between a first mortgage on a property that is also subject to a second lien mortgage and one that is not. However, modifying the stress test to capture that additional risk would require that the Enterprises be able to identify those first mortgages that are also subject to a second lien. Currently, the Enterprises are unable to do that in all cases. Although no change has been made in the final regulation to respond to the concern, OFHEO will require the Enterprises to collect combined current LTV information for structured mortgages to analyze for possible use in future modeling.

n. Product Categories

The Other Fixed-Rate Products Model proposed in NPR2 included five categories of mortgage products to distinguish their different risk characteristics—20-year fixed-rate mortgages, 15-year fixed-rate mortgages, balloon loans, Government loans, and second lien loans. However, in the re-estimation of the Model, OFHEO found that the inclusion of the second lien loans as a separate product category caused the coefficients associated with the 20-year fixed-rate mortgages and the 15-year fixed rate mortgages to be statistically insignificant. As a result, OFHEO eliminated the second lien data from the re-estimation. In the stress test, loans with the second lien product code will be assigned the coefficient weights from the Other Fixed-Rate Products Model, using the government loan coefficient weight for government loans and the balloon loan coefficient for non-government loans. In addition, certain fixed-rate mortgage products with variable payments over time (such as graduated payment mortgages and growing equity mortgages) are no longer treated as ARMs as they were in NPR2, because they are not affected by changes in market interest rates. Like other non-standard fixed rate products, these loans, many of which are past their scheduled payment adjustment periods,

[95] These effects are relative. For example, the model predicts ARM prepayments will rise during a down-rate scenario, but not by as much as 30FRM prepayments are predicted to rise in the same scenario.

[96] Under NPR2, the first mortgage of a structured loan is treated as an 80 percent LTV loan without taking into account the second lien loan. However, in modeling the second lien loan, the stress test takes into account the existence of the first lien loan and assigns the second lien loan the combined LTV. The commenter's suggestion implies that because the first mortgage is not also given the combined LTV, the capital requirements for the structured loan are understated.

[97] The comment implies that the first lien mortgage should also be assigned the combined LTV.

[98] An 80–10–10 loan is a loan with an 80 percent LTV first mortgage, a 10 percent LTV second lien, and a 10 percent down payment.

are assigned the balloon loan coefficient weight.

o. Prepayment Rate Levels

(i) Comments

A number of commenters, including the Enterprises, stated that the stress test produces unreasonably low prepayment rates in the up-rate scenario. One commenter suggested that, based on the commenter's analysis of historical data, prepayment speeds in the up-rate scenario should be roughly double those proposed by OFHEO. The commenter attributed the difference to factors that OFHEO may not have taken into account, such as the nonassumability of conventional mortgage loans since 1985 and the long-run positive correlation of home price inflation with rising interest rates. As a result, the commenter supported a conservative prepayment speed assumption of 100–120 PSA [99] or 6–7 CPR [100] in the up-rate scenario or, alternatively, the adoption of a specific prepayment rate for the up-rate scenario. Other commenters argued that prepayment speeds in the up-rate scenario were implausible because termination rates (prepayment rates plus default rates) would be below historical mobility rates.

Some of the commenters attributed the low prepayment rates in the up-rate scenario to the fact that the data used to estimate the model are from a period when mortgage assumptions were common and interest rates were generally falling. Hence, the commenters argued, the data used are not representative of the mortgages currently owned by the Enterprises (and, therefore, presumably insufficient to establish prepayment rates for the up-rate scenario). These commenters suggested that OFHEO calibrate prepayments to the benchmark loss experience and adjust the prepayment rates upward in the up-rate scenario to reflect the introduction of due-on-sale clauses in Enterprise mortgages and to be more consistent with results from homeowner mobility studies. One commenter noted that historical parameters will underestimate prepayments in the future because technological improvements have reduced the cost and inconvenience of rewriting and prepaying loans and suggested that OFHEO correct for the underestimation. Some commenters thought that prepayment rates in the down-rate scenario were too high, and some thought they were too low. Freddie Mac thought prepayment rates in the down-rate scenario were reasonable, noting that OFHEO's probability of negative equity variable dampens the effect of large refinancing incentives by capturing the effects of the falling house price environment in the down-rate scenario and that prepayment rates for loans with high original LTVs in falling house price environments will be far lower than those of low LTV loans in good house price environments.

Two commenters noted that the stress test does not produce prepayment rates for the benchmark cohort that match actual historical rates. One of those observed that the stress test produces prepayment rates that are significantly higher than the mortgage industry experience for the benchmark region and time period. The other commenter noted that it is important for prepayment speeds not to be overstated in the down-rate scenario or understated in the up-rate scenario because the linkage of default and prepayment characteristics associated with the joint modeling approach may ''inadvertently magnify the dollars at risk.'' The commenter suggested further study of this issue. Another commenter suggested that prepayments in the stress test should be calculated based upon house prices growing at normal historical levels, rather than using the house price path of the benchmark loss experience.

(ii) OFHEO's Response

The final rule does not adopt the commenters' recommendations for modifying the prepayment equations. Implicit in a number of these comments is a belief that patterns of prepayment, like patterns of defaults and losses, should be consistent with those of the benchmark loss experience. However, the 1992 Act only requires that defaults and loss severities be consistent with those of the benchmark loss experience. Characteristics of the stress period other than those specified by the statute, ''such as prepayment experience and dividend policies'' are to be determined by the Director ''on the basis of available information, to be most consistent with the stress period.[101] OFHEO's approach, which reflects prepayment patterns based on all available historical data, is appropriately conservative. OFHEO believes that, in order to represent the interest rate risk of the Enterprises realistically, the stress test simulation of prepayments should reflect overall historical prepayment patterns rather than reflecting only borrowers' prepayment behavior associated with the benchmark loss experience. Historical patterns have evolved over time and take into account more recent patterns of prepayment, which are more sensitive to interest rate changes than the prepayments of the benchmark loss experience.

With respect to concerns about low prepayment speeds in the up-rate scenario, OFHEO believes that scenario represents an unprecedented combination of events—a severe nationwide recession combined with high interest rates. Borrowers would have no incentive to prepay unless they moved, but mobility rates would be unusually low. The cost of switching to a mortgage with a much higher interest rate would greatly discourage moving, and limited job availability would provide little incentive. Similar conditions, though on a lesser scale, occurred nationwide during the early 1980s. Turnover rate estimates provided by Salomon Smith Barney in its comment show an average annual rate of 4.3 percent in 1981–1983. Given the more severe conditions in the stress test, the slightly slower prepayment speeds generated by the stress test model are quite reasonable.

Similarly, the commenter's concern about data incorporating assumable loans is misplaced. The Enterprises' historical data from before 1986 is a relatively small portion of the overall dataset because comparatively few loans were purchased from those origination years, and the Enterprise data are incomplete. Furthermore, mortgage rates in the early 1980s were unusually high, so assumability would not have had a large effect on prepayment. The dataset contains few loans originated in 1979. Any small effect on the results may be offset by the unavailability of ARM and balloon loans in the early origination years. Borrowers who expect to prepay more often select these loan types, which tends to lower prepayment rates on 30-year fixed-rate loans, but that effect is absent from early loan data.

p. Seasoned Loan Purchases

The stress test proposed in NPR2 made distinctions among loans based on their age through the age variables and their changes in LTVs (by amortizing mortgage balances and updating property values), but made no distinction between loans purchased or guaranteed by an Enterprise shortly after their origination, and loans purchased or guaranteed after having been held for a period of time by the originator.

Freddie Mac criticized the lack of distinction between loans purchased or

[99] This measure of prepayment speed is derived from the prepayment model of the Public Securities Association, (PSA), which is an industry standard for measuring prepayment speeds.

[100] CPR refers to ''conditional prepayment rate,'' a commonly used method of expressing prepayment speeds on an annualized basis.

[101] 12 U.S.C. 4611(b)(2).

guaranteed just after origination and ''seasoned purchases,'' (loans purchased or guaranteed when they are at least 12 months old). Freddie Mac stated that its ability to screen loans with ''substandard performance'' from seasoned purchases lowers their risk relative to loans purchased near the time of origination and suggested that OFHEO identify seasoned purchases as a separate category and, ''based on analysis,'' reduce their defaults in that category by 30 percent relative to loans having otherwise similar characteristics.

In the absence of any empirical evidence that a reduction in default rates is appropriate for seasoned loan purchases, and in view of the increased complexity that would result from adding another data element, the final rule does not adjust default rates downward for seasoned loan purchases. However, should credible evidence become available in the future that demonstrates that there is a significant difference between the default rates for seasoned loan purchases and the default rates for newly originated loan purchases, OFHEO will consider whether the additional complexity that would result is warranted.

q. Summary of Changes

In the final rule, the following changes are made to the proposed single family default and prepayment models:

- The models are reestimated using a more recent and complete dataset.
- A categorical age variable replaces the continuous age and age squared variables
- Investor-owned fractions are calculated for each loan group and used to adjust the investor-owned coefficient.
- Season of the year and relative loan size are dropped as explanatory variables in the estimation of default equations.
- Default rates are calibrated to the benchmark loss experience by LTV category.
- The ARM model, which has been respecified and reestimated on a data set of pooled 30FRM and ARM loans, captures the average effects of payment shock and other performance factors relative to 30 FRM loans while controlling for risk factors common to both types of loans.

2. Single Family Loss Severity

NPR2 proposed to calculate loss severity during the stress period as a percentage of the defaulting principal balance at the time of loan default. Three components of loss severity were considered—loss of loan principal, transactions costs, and funding costs. Loss of loan principal is the Real Estate Owned (REO) sale price less the loan balance, based on normal loan amortization, at the time of default. Transactions costs comprise foreclosure/legal costs, property holding and disposition costs, and for sold loans, four months of interest at the security pass-through rate. Funding costs, the Enterprises' cost of funding a loan between the time of default and sale of the foreclosed property, were captured by discounting all costs and revenues based on time of receipt during the foreclosure/REO disposition process.

NPR2 proposed an econometric model to estimate loss of loan principal, fixed parameters for transactions costs and time intervals for determining funding costs, and funding rates based on stress period interest rates. The econometric model, estimated using all available historical data for loans entering REO status, calculates the loss of loan principal as a function of median house price appreciation rates reflected by the HPI, and house price volatility. The model includes a single calibration constant, to produce results consistent with the ALMO benchmark loss experience.

In the proposed stress test, property holding and disposition costs and foreclosure/legal costs are based on averages from all available data on Enterprise REO properties. The four months of loan interest the Enterprises must pass through to MBS investors for defaulted loans is calculated at the MBS passthrough rate. Funding costs are determined by discounting all loss severity elements by the six-month Federal Agency Cost-of-Funds rate to produce the present value of each element in the month of default. The time intervals used in the discounting process are based on benchmark REO loans.

a. Comments

Commenters criticized the complexity of the proposed methods for calculating the loss of loan principal and funding costs, the fact that the approach did not consider pre-1987 Fannie Mae loss severity data, the calibration of the loss of loan principal rates to the benchmark loss experience using a single constant term rather than by LTV category, and the inconsistent treatment of the components of loss severity in their relationship to the benchmark loss experience. (Only loss of loan principal and the timing of loss severity revenues and costs were based on the benchmark loss experience.)

The Enterprises suggested that OFHEO extract loss of loan principal estimates and funding costs directly from the benchmark loss experience and use those in the stress test. They suggested (1) extracting loss severity rates for three LTV ranges directly from the benchmark loss experience, (2) subtracting from the resulting loss rates benchmark funding costs, (3) making adjustments for pre-1987 Fannie Mae REO data (which Fannie Mae has only recently made available), (4) adding back new fixed funding costs (rather than using the present value approach used to identify the benchmark loss experience) based on the interest rate scenario (down- or up-rate) and relative LTV, and (5) make specified adjustments for loan age and product type, also considering LTV.

GE Capital and MICA criticized OFHEO's approach to loss severity in the context of broader concerns about stress test mortgage losses being lower than those implied by the ALMO benchmark loss experience, inconsistency between loss rates in the up- and down-rate scenarios, and the offsetting of some credit stress by interest rate stress. To eliminate concerns about inconsistency between the interest rate scenarios and the offsetting of credit stress by interest rate stress they proposed an approach to loss severity rates that would be insensitive to differences in the two interest rate scenarios. To address concerns about overall mortgage losses, they proposed using LTV category-specific calibration constants in the econometric model. They proposed a calibration process that substituted the Moody's AAA regional home price decline and an alternative interest rate path for the benchmark house price and interest rate paths. Details of their proposal for mortgage performance modeling are summarized earlier in III.I.1.a., Modeling Approach.

b. OFHEO's Response

Upon review of the approach included in NPR2 and the related comments, OFHEO determined that the modeling of loss of principal balance could be greatly simplified. While the final regulation does not adopt the commenters' specific suggestions, it modifies the calculation of loss of loan principal and reduces its variability.

Rather than using an econometric model to estimate loss of loan principal calibrated to the benchmark loss experience, the final rule specifies loss of loan principal as a function of median house price appreciation rates reflected by the HPI, and the average ratio of actual sale prices of benchmark REO to values based on projected HPI changes. The final rule eliminates use of the HPI volatility parameters, and since it directly relates loss of loan principal to the benchmark loss experience, requires no model calibration.

The final rule continues to apply the present value approach proposed in NPR2 to determine funding costs. OFHEO does not agree that funding costs should be fixed, since they would not be consistent with the widely varying interest rate conditions associated with the two stress test interest rate scenarios. OFHEO believes the funding costs should be directly determined by stress test interest rates.

The final rule continues to apply NPR2 approaches to transactions costs and the time intervals used to determine funding costs. However, as a result of including previously unavailable Fannie Mae data on foreclosure costs in the calculation of average historical REO holding and disposition costs, the average foreclosure costs decreased from 5 percent to 3.7 percent and the REO holding and disposition costs increased from 13.7 percent to 16.3 percent.

As discussed earlier in III.I.1.a., Modeling Approach, the 1992 Act contemplates stress test results that reflect the interaction of interest rates with mortgage performance. OFHEO believes the differences in mortgage performance in the two stress test interest rate scenarios are consistent with the 1992 Act.

3. Multifamily Loan Performance

NPR2 utilized two multifamily default models and five multifamily prepayment models to capture the behavior of loans purchased under different programs and at different stages in their life cycles. The models were estimated using historical data through 1995 on the performance of Enterprise multifamily loans. NPR2 proposed one default model for ''cash'' programs and another for loans acquired under ''negotiated'' transactions (NT loans). The proposed prepayment models allowed for appropriate distinctions between fixed- and adjustable-rate loans, between fully-amortizing and balloon loans, and between loans that are within yield maintenance or prepayment penalty periods (i.e., periods during which restrictions and/or penalties for prepaying a loan apply) and those that are not. The models also provided for some balloon loans to survive beyond their stated maturity dates. All of the multifamily default and prepayment models were estimated with historical rent and vacancy rates. Simulations were based upon rates in the ALMO benchmark loss experience to create stress test conditions. To determine loss severity on multifamily cash loans, NPR2 used average cost and revenue components from all historical multifamily real estate owned (REO) from which severity data was available, which consisted of Freddie Mac loans originated in the 1980s. On NT loans that included repurchase agreements, the loss severity rate was set at an historical rate adjusted for the seller/servicer claim rate on 90-day delinquent loans and was set on FHA loans at three percent of UPB.

a. Multifamily Default Model

The proposed rule used the following variables to determine default rates in the cash model: [102]

- Joint Probability of Negative Equity and Negative Cash Flow—Used to capture the probability of a particular loan incurring concurrent negative cash flow and negative equity.
- Mortgage Age and Age Squared—Used to capture change in the risk of default as loans age.
- Program Restructuring—Used to capture difference between default risk of original multifamily programs and current, restructured programs.
- Balloon Maturity Risk—Used to capture the added risk of default as the balloon maturity date approaches.
- Value of Depreciation Write-offs—Used to capture effect on default rates of the value of certain tax benefits.

Many commenters addressed the methodology proposed to calculate multifamily loan defaults. Some of these comments expressed concern that the multifamily default levels not be so high as to impact negatively upon the Enterprises' low income housing programs and their ability to meet housing goals. Other comments viewed the multifamily model as insufficiently stressful and suggested major modifications to avoid creating perverse incentives and anomalies in the final rule. Others suggested that the proposed rule should take into consideration the differences between Fannie Mae's Delegated Underwriting and Servicing (DUS) loans and loans from other programs. A significant number of comments also discussed the appropriateness of specific variables proposed to determine default rates. These comments and OFHEO's responses are summarized below by topic.

(i) Negative Equity and Current LTV Variables

A primary concern of numerous commenters was the methodology in the proposed rule for updating property values from loan origination through the stress period, which affected the Joint Probability of Negative Equity and Negative Cash Flow variable (JP) and its balloon-maturity counterpart (BJP). The model established current property values by projecting the net operating income of each property and capitalizing these cash flows to project price changes for the collateral properties. The capitalization rates that were used to determine property values were based upon ten-year constant maturity Treasury yields.

Commenters criticized this method of capitalizing the net operating income as inappropriate for a number of reasons. Some commenters suggested it resulted in large increases in property values in the down-rate scenario in contrast to the commenters' historical experience. Some commenters argued that any realistic capitalization rate model should take into consideration numerous factors other than current interest rates, such as local housing inventory and the marketability of particular neighborhoods. Furthermore, commenters were concerned that the proposed methodology incorporates implicit assumptions about economic parameters (such as variance, covariance and distribution of rents, vacancy rates and property values) that were untested, but had significant impact on default rates. Largely as a result of these concerns about the capitalization rate model, all commenters to address the issue suggested that OFHEO find an alternative to the JP variable.

After considering these comments and further analyzing the NPR2 approach, OFHEO decided to eliminate the calculation of the probability of negative equity from the multifamily model, thereby eliminating the JP and BJP variables and the need to update property values throughout the stress test. OFHEO concluded that the capitalization rate estimation proposed in NPR2 was not sufficiently robust, given the significant impact it could have on multifamily default rates. Because the probability of negative equity comprised part of the JP and BJP variables, those variables could not be used and the model in the final rule replaces JP and BJP with variables related to property cash flow, property value, and balloon risk.

The first of these variables is the natural logarithm of the current debt-service-coverage ratio (current DCR).[103]

[102] Because the NT model has been dropped from the final rule, it is not described. *See* 64 FR 18136–18139, April 13, 1999, for a description.

[103] OFHEO used the log transformation on DCR and LTV to capture the non-linear effects of these variables. In other words, the incremental effect on the risk of default of a change in DCR (LTV) was

Current DCR is the ratio of the net operating income on the property to the debt-service payments. Current DCR is updated in essentially the same way as in NPR2 but with a newly-constructed rent and vacancy rate series. The second is an Underwater DCR indicator variable (UDCR), which indicates that property cash flow is negative because current DCR has declined below 1.00. The third is the natural logarithm of LTV at loan origination or, if origination information is unavailable, at Enterprise acquisition (LTV).[104] The fourth is a balloon maturity flag or indicator (BM) that indicates a balloon loan within twelve months of maturity.

In combination, current DCR, UDCR, and LTV capture essentially the same mortgage performance factors the JP variable was designed to capture—the effects of negative equity and negative cash flow on default probability. Current DCR captures the expected inverse relationship between debt-service-coverage ratio (net operating income relative to mortgage payment) and default risk. Larger surpluses of net operating income over the amount required to service debt represent larger borrower cushions to weather possible increases in vacancy rates arising from stressful economic conditions, such as the stress test. UDCR captures the additional risk of default when current DCR is negative. LTV captures the lower risk of default associated with greater borrower equity early in the life of the loan. Larger amounts of borrower equity at origination or acquisition appear to serve as a cushion in delaying possible negative equity in situations of property value deterioration caused by any number of primarily local or regional phenomena.[105]

The fourth variable, a balloon maturity flag or indicator (BM) has taken the place of the BJP variable. It captures additional risk of default, resulting primarily from the borrower's inability to refinance during the twelve months prior to balloon maturity. In the final rule, conditional default rates reflect higher risk in the twelve months prior to balloon maturity as a result of the balloon maturity flag, but balloon loans are not extended at maturity as they were in NPR2.[106] Although OFHEO realizes that the Enterprises commonly permit balloon term extensions to qualified borrowers, particularly when the market rate of interest exceeds the original note rate and a reversal of the rate trend is expected in the short term, OFHEO also finds it inappropriate to model this practice in the stress test given the restrictions on new business imposed by the 1992 Act. Accordingly, and consistent with the procedure for single family loans, in the final rule, multifamily balloon loans which mature during the stress test will pay off at maturity.

OFHEO determined that the definition of the term ''seasoning'' in the 1992 Act must be applied differently to multifamily loans than to single family loans.[107] The definition appears to have been crafted to apply only to single family loans, because it defines ''seasoning'' as the change in LTV of mortgage loans based upon changes in a specific single family house price index or another equivalent index of OFHEO's choosing. At this time, there are no indexes of multifamily property values available that meet the standards of quality, authority, and public availability in the 1992 Act. Therefore, in NPR2, OFHEO defined an equivalent index of multifamily property values imputed from existing rental and vacancy indexes in combination with the capitalization rate model discussed above. However, OFHEO is now persuaded by the commenters not to use this approach. Accordingly, the final rule does not attempt to adjust LTV for multifamily loans directly as it does for single family loans. Rather, to account for differences in seasoning among multifamily loans, the stress test updates DCR over time.

The seasoning requirements of the 1992 Act are intended to require OFHEO to take into account the impact of changes in the housing market on mortgage losses.[108] Congress recognized that changes in house prices, as measured by widely available and reliable indexes, provide an important measure of the direction of the single family housing market. However, the 1992 Act also requires OFHEO to take into account differences in types of mortgage loans,[109] and applying single family seasoning to multifamily loans would not take into account the important differences between these loan types. Because multifamily loans are commercial rather than residential loans, updating property DCR provides a good measure of the impact of changes in the multifamily housing market (and, therefore, of ''seasoning'') on multifamily defaults. Therefore (and in contrast to single family lending, where DCR is not applicable), in multifamily lending, change in DCR is the most direct determinant of the continuing viability of a loan.

OFHEO has determined that the intent of the statute to take both seasoning and product differences into account is best effected as to multifamily loans by updating DCR through the stress period using the government indexes that best represent rent growth and vacancy rates from the ALMO benchmark region and time period.

(ii) Use of Actual Debt-Coverage Ratio

The Enterprises commented that OFHEO should use actual data on income and expenses from annual operating statements along with mortgage-payment information to establish the DCR of multifamily properties as of the start of the stress test. OFHEO agrees that actual data is preferable to the process proposed in NPR2 of updating origination DCR using historical rent growth and vacancy rates to impute net operating income as of the start of the stress test. The final rule is modified accordingly. Thus, for multifamily loans that have property-level operating statements, the most recent available actual net operating income figures from these statements will be divided by the current mortgage payment and the resulting DCR will be reported in the Risk-based-capital Report, to be used to establish DCR immediately prior to the stress period.

For properties for which the Enterprises at present lack annual operating statements, the stress test uses origination DCR as DCR immediately prior to the stress period. If origination data is also lacking, the stress test uses acquisition DCR as DCR immediately prior to the stress period. If both origination and acquisition data are lacking, the final rule specifies a DCR immediately prior to the stress period of 1.10 for Old Book loans and 1.30 for

found to be greater at low DCR (high LTV) than at high DCR (low LTV).

[104] *See supra* note 103.

[105] For loans missing origination LTV, acquisition LTV is used. If both are unavailable, 80 percent and 90 percent, respectively, are used for New Book and Old Book loans. These figures represent the mean origination/acquisition LTV of loans with such data.

[106] In NPR2, loans already past their maturity dates at the start of the stress test were extended three years and loans not yet past their maturity dates at the start of the stress test were extended five years. In both cases, the remaining loan balance was amortized at the then-current market interest rate over the original amortization term.

[107] The 1992 Act defines ''seasoning'' at 12 U.S.C. 4611(d)(1). The Act provides that ''the Director shall take into account * * * differences in seasoning of mortgages * * * the Director considers appropriate.'' 12 U.S.C. 4611(b)(1).

[108] 12 U.S.C. 4611(b)(2).

[109] ''[T]he Director shall take into account appropriate distinctions among types of mortgage products * * * the Director considers appropriate.'' 12 U.S.C. 4611(b)(1).

New Book loans.[110] OFHEO anticipates that these treatments are sufficiently conservative to cause the Enterprises to begin collecting accurate DCR data on all multifamily loans for which it is possible to do so. If OFHEO finds these treatments not to be sufficiently conservative for that purpose, it will reconsider the appropriate DCR levels for loans with missing DCR data.

(iii) Age and Age Squared Variables

Only the Enterprises commented directly upon the inclusion of the two age variables, age and age squared, in the default model. Although neither Enterprise recommended specifically that these variables be eliminated from the model, neither included them in its list of recommended variables. Freddie Mac suggested that the age variables are likely substituting for other variables or capturing measurement problems and are unlikely to be related to the aging effects that they are intended to capture. Fannie Mae commented that the age variables increase default rates to an unexpected degree. As an example, Fannie Mae suggested that a 13 percentage point difference in ten-year default rates is too great between a cash 80 percent LTV, 1.25 DCR, 15-year, balloon loan that is newly originated and the same loan that is four years old.

OFHEO disagrees with the Enterprises' criticisms of the age variables and has retained them in the multifamily model because they are highly reliable predictors of default. Additionally, they reflect the pattern of actual defaults in Enterprise data (defaults increase at a decreasing rate with loan age). OFHEO recognizes that the significance of the age variables in the multifamily default model may be substituting for omitted or mismeasured variables. However, there also is evidence that the aging effect may be a credible discriminator of default risk in and of itself.[111] The lack of detailed and consistently measured operating statement and property condition data render further investigation of the underlying reasons for the significance of the age variables on multifamily default risk difficult.

(iv) Operating Expense Ratio

NPR2 calculated DCR with expenses as a fixed share (47.2 percent) of the gross potential rents. Fannie Mae commented that a fixed expense ratio increases the volatility of net operating income and recommended that OFHEO modify the constant expense factor to reflect the reality that the components of property level operating expenses are not all fixed shares of gross income. Fannie Mae suggested that OFHEO reflect this mixture either by reducing the change in net operating income in response to a change in vacancy rates or by utilizing actual net operating income values from the annual operating statements Fannie Mae receives on multifamily loans.

After consideration of these comments, OFHEO concluded, from both the literature and the limited availability of data, that neither of the Fannie Mae approaches should be accepted. OFHEO recognized that property level operating expenses and its components may not remain fixed shares of gross rents over time. However, OFHEO is unsatisfied with current approaches and data available for modeling the inflation in multifamily property expenses and its components. One study divided operating expenses into four fixed-share components—labor costs, utilities, insurance and taxes, and construction materials—and modeled growth in each with indexes that would reflect the inflation in each component.[112] Property-level variances around the mean were also measured, the author concluding that it would be surprising if operating expenses varied from one year to the next by amounts as large as those observed. Other approaches to modeling property level operating expenses or its components would have required the use of simplifying assumptions that cannot be tested regarding component shares of total operating expenses and related indexes approximating respective growth rates. OFHEO has found insufficient evidence that any of these methods provided improved estimates over the NPR2 approach.

OFHEO also considered Fannie Mae's suggestion to use actual observations of net operating income from the Enterprises, where available, to estimate the model. OFHEO found this suggestion unpersuasive because the percentage of loans with annual DCR in the estimation dataset was just 14 percent. In terms of observations for each year in the life of each loan, the percentage of records with annual DCR dropped to 9.7 percent, with very few of those having three or more consecutive annual DCR observations (3.7 percent of total loan-year records). Further complicating the estimation process was the fact that annual DCRs are not calculated by the Enterprises in the same way as are origination/acquisition DCRs. While the Enterprises typically calculate the latter using conservative assumptions of vacancy rates, rental and other income, expenses, replacement reserves and the like, the former represent actual data from operating statements, unadjusted for normal variations from year to year or deviations from market rates. In sum, the data were too sparse and dissimilar for use in constructing a reasonably robust model.

Accordingly, in estimating the multifamily default model for the final rule, OFHEO utilized the NPR2 expense constant for all loan observations and did not use Enterprise actual net operating income to update DCR for estimation purposes.

(v) Use of Two Default Models

Both Enterprises commented upon OFHEO's proposal to use two default models, one for negotiated transactions (NT) and one for cash purchases. Freddie Mac recommended that the distinction between the two categories of loans be dropped because it is too difficult to define, explaining that Freddie Mac was unable to replicate the classification of its own loans that OFHEO used in NPR2. Fannie Mae echoed these comments, targeting the NT equation, in particular, as poorly specified and not a useful guide to multifamily loan performance. No comments were received supporting the use of two default models. However, both Enterprises and several other commenters supported the general concept of distinguishing between multifamily programs or regimes in the stress test. All commenters on the subject concurred that the underwriting and servicing practices of the Enterprises underwent major and permanent changes beginning in 1988 (Fannie Mae) and in 1993 (Freddie Mac), which should be reflected in the stress test. Comments from seller/servicers of the Enterprises urged OFHEO to give credit for improvements in multifamily loan management in order to avoid imposing inappropriately large marginal capital costs on this portion of the Enterprises' business. In addition, seller/servicers in Fannie Mae's DUS program suggested that DUS loans get special treatment to reflect what they felt were more rigorous guidelines, loss-sharing provisions, and reserve and reporting requirements in that program.

In considering the need for two default models, OFHEO studied the changes in the Enterprises' multifamily businesses, analyzed the comments, and conducted additional modeling research

[110] New Book and Old Book loans are discussed *infra,* 3.a.v., Use of Two Default Models.

[111] Edward I. Altman, ''Zeta Analysis and Other Attempts to Classify and Predict Business Failures,'' *Corporate Financial Distress and Bankruptcy: A Complete Guide to Predicting and Avoiding Distress and Profiting from Bankruptcy* (1993).

with recently provided data that is far more complete than that previously provided.[113] OFHEO concluded that the distinction between NT and cash purchases was no longer sufficiently important to require two models. Accordingly, OFHEO has replaced the two-model approach with one multifamily default equation that distinguishes between the performance of loans with indicator variables that apply a multiplier to adjust the loans' relative default rates.

One of these indicator variables, the New Book Flag (and its product adjustment factors, the New ARM Flag and the New Balloon Flag), like the program restructuring variable in NPR2, distinguishes loans acquired in 1988 and after at Fannie Mae and in 1993 and after at Freddie Mac (New Book loans) from loans acquired earlier (Old Book loans). It reflects the fact that during 1988 and 1993, Fannie Mae and Freddie Mac, respectively, implemented significant permanent changes in their methods and standards for underwriting and servicing multifamily loans. Loans acquired after these dates that constitute defensive refinances of Old Book business remain classified as Old Book. The New Book Flag has a greater impact on default rates than the NPR2 program restructuring variable, due to use of additional data in estimating the model and the decision to eliminate the adjustments to Old Book loan LTVs and DCRs that are used in NPR2.[114]

In re-evaluating the performance of multifamily New Book versus Old Book loans, however, OFHEO discovered that the full effect of the New Book benefit applies only to fixed-rate fully amortizing loans. For ARMs, the reduction in New Book default risk is significantly less than for New Book loans in general. Likewise, but to a lesser extent, fixed-rate balloon loans do not exhibit the full effect of reduced New Book default risk. These effects are reflected in the multifamily default model.

The other program indicator variable, the Ratio Update Flag, is used to identify newly originated loans and seasoned acquisitions on which DCR and LTV have been updated using conservative measures such as market-rate minimum vacancy rates, minimum actual historical other income, forward-looking trended expenses, and minimum replacement reserves, management fees, and capitalization rates.[115] After re-calculation of DCR and LTV, the Enterprises screen these loans for minimum acceptable DCR and maximum acceptable LTV ratios for purchase or securitization. OFHEO found that New Book loans that were subjected to the aforementioned type of ratio update process performed better than those that were not. Loans with neither origination nor acquisition DCR are treated as not having undergone the ratio update process.

(vi) Tax Reform and the Depreciation Write-off Variable

No commenters objected directly to the Depreciation Write-off variable (DW) but, for a number of reasons, OFHEO found it inappropriate for the multifamily default model in the final rule. First, the capitalization rate model, which was criticized by commenters in conjunction with the Joint Probability of Negative Equity and Negative Cash Flow variable (JP), was also used to construct the return on equity portion of the weighted average debt and equity discount rate in the DW variable. Because OFHEO decided to drop the JP variable from the multifamily default model, largely because of concerns about the capitalization rate model, it would have been inappropriate to retain the DW variable. Second, the available data on value of depreciation write-offs suffered from the same lack of regional and sub-market variation criticized in the capitalization rate model.[116]

(vii) Use of External Benchmarks

Several commenters asked OFHEO to allow external benchmarks and industry standards to serve as tests of reasonableness for the multifamily model results until sufficient reliable data become available to build a more sensitive and detailed model. In most cases, OFHEO agrees with the commenters that external benchmarks and industry standards may be used for assessing the reasonableness of multifamily stress test default rates. For this reason, OFHEO has compared its simulated stress test results with those provided by the Enterprises in their comments and consulted rating agency and related analyses. However, there exist far fewer studies of the determinants of multifamily default than single family default. Still fewer studies analyze defaults under stressful economic conditions—and none examines multifamily defaults through a period of time as stressful as the stress test. Notwithstanding these limitations, OFHEO found that for fixed-rate loans both of these avenues provide confirmation that OFHEO's model results are reasonable.

For multifamily ARM default rates, however, there are no studies involving stressful economic environments that OFHEO found of adequate quality and authority to be useful for comparison. For these loans, OFHEO looked to whether the default rates on the loans appear reasonable, given their extreme sensitivity to interest rates and compared the model's results to the limited data that is available regarding multifamily ARM performance under economic stress. This analysis confirmed the reasonableness of the ARM model.

These tests of reasonableness employed by OFHEO are discussed below.

(a) Results Provided by the Enterprises

The Enterprises provided, in their comments, computations of cumulative multifamily default rates for two

[113] The Enterprises recently provided data on 40,247 loans. Those loans were combined with pre-1991 Fannie Mae data received in earlier submissions less loans with missing origination dates, leaving 42,334 loans that were used for analysis. Of the 42,334 loans, 58 percent (24,743 loans, primarily seasoned-at-acquisition ARMs) had neither origination nor acquisition DCR data. In NPR2, the missing values were populated by reverse-engineering DCR from the capitalization rate model and origination/acquisition LTV. In the final rule, the cap rate model is not used. Instead, five random samples of the loans with missing origination and acquisition DCR were taken. Each random sample was combined with the 42 percent of loans that were not missing origination/acquisition DCR. All samples produced similar model estimation results; however, the one with the best goodness of fit was selected as the analysis data set. As in NPR2, in creating loan-year records from loan-level data, records prior to the year of Enterprise acquisition were removed to avoid left-censoring bias. Also, prepayments were right-censored in the year of loan termination. *See* C.B. Begg and R. Gray, ''Calculation of Polychotomous Logistic Regression Parameters Using Individualized Regressions,'' *Biometrica* (1984).

[114] The New Book flag is the reciprocal of the program restructuring variable in NPR2, but it has the same affect. The New Book Flag decreases the default rate on New Book loans, while the program restructuring variable increased the default rate on Old Book loans. The larger impact of the New Book Flag coefficient in the final rule reflects four additional years of loan performance that show lower default rates, all else being equal, for New Book loans in general than were indicated previously. Another reason for the larger absolute value of the coefficient on New Book loans is that adjustments to Old Book data were not made in the final rule. In NPR2, origination/acquisition DCR was adjusted downward and origination/acquisition LTV was adjusted upward for Old Book loans. Freddie Mac commented that it was not the case that every Old Book loan had an overstated DCR and an understated LTV. OFHEO concluded that the adjustment proposed in NPR2 was not appropriate for every Old Book loan and that it did not resolve Old Book data integrity issues. Therefore, the final rule does not use the NPR2 adjustments to the Old Book loans.

[115] The ratio update process may have been performed by the Enterprise itself or under delegated authority by a qualified seller/servicer either at loan origination or at Enterprise acquisition.

[116] *See* Table 34 of NPR2, 64 FR 18203, April 13, 1999 (National values for depreciation write-offs, 1983–1995).

specific newly originated fixed-rate products—the 15-year fixed-rate balloon (Fannie Mae) and the ten-year fixed-rate balloon (Freddie Mac)—as examples of rates that they considered to be reasonable for managing multifamily risk. Both Enterprises used the NPR2 rent and vacancy scenario to produce the results and each stated that the default rates assumed zero prepayments and were for 30-year amortization loans with eight percent coupons. The respective default rate tables were divided into cohorts by current DCR immediately prior to the stress test and origination LTV. Fannie Mae's results were generated using the NPR2 cash default model. Freddie Mac's results were generated using a different model that was specified explicitly, including coefficients (some of which Freddie Mac estimated and others of which Freddie Mac assumed).[117]

OFHEO replicated the tables of default rates provided by Fannie Mae and Freddie Mac, using the multifamily default model in the final rule, along with the newly constructed rent and vacancy scenario. Under the same assumptions of zero prepayments, an 8 percent coupon, 30-year amortization, newly originated product immediately preceding the stress test, OFHEO obtained results similar to those provided by Fannie Mae for the 15-year balloon and to those provided by Freddie Mac for the 10-year balloon. For example, for a loan with a 1.20 DCR immediately prior to the stress test and an 80 percent origination LTV, Fannie Mae suggested an 18 percent cumulative conditional default rate for the 15-year balloon and Freddie Mac recommended a 21 percent cumulative default rate for the 10-year balloon. OFHEO's multifamily default model in the final rule produced cumulative conditional default rates for the 15-year balloon and for the 10-year balloon of 26 percent and 30 percent, respectively, for the non-ratio-updated products and of 15 and 18 percent, respectively, for those products that underwent the ratio-update process.

OFHEO believes that the consistency with which its model results tracked those provided by Fannie Mae and Freddie Mac for the products and DCR/LTV combinations they supplied helps confirm the reasonableness of OFHEO's model results. Fannie Mae suggested, however, that their tabular default rates (or ones like them) be used directly for all loans with a balloon year multiple of 3.0 at maturity for balloon loans and that various other indicators of default risk such as product-type, book of business, and loan age be ignored. OFHEO did not accept this suggestion, because evidence from various default studies as well as actual observed default rates of Fannie Mae's own portfolio of multifamily loans show that default rates do vary significantly by product type, age, and factors other than current DCR, origination LTV and balloon maturity risk. OFHEO has captured those other risk factors while ensuring the reasonableness of model results.

(b) Rating Agency and Related Analyses

Rather than targeting stressful economic conditions, most studies of the determinants of multifamily default have estimated models over whatever time period data are available, which may or may not contain a period of economic stress. As a result, OFHEO turned to the rating agencies for industry norms with regard to cumulative default rates of multifamily loans under stress. Each rating agency's methodology for assessing credit risk is similar to the others', although some focus on DCR as the primary determinant of default and others on both DCR and LTV. Though they share their methodologies in print and on the internet, the rating agencies often do not report subordination levels for large groups of loans outside of specific security transactions. Fitch IBCA is the exception.

Fitch IBCA studied 18,839 loans in 33 commercial transactions issued between 1991 and mid-1996.[118] The database was composed of two distinct subgroups, loans from Resolution Trust Corporation (RTC) transactions and conduit loans,[119] and a default was defined as a delinquency of 60 or more days on a mortgage payment or a delinquency of 90 or more days on a balloon payment. Without regard to CMBS property type,[120] Fitch found average annual default rates of 4.37 percent and 1.97 percent, respectively, for RTC and conduit loans. Fitch described the differential (36 percent versus 18 percent over ten years, assuming no prepayments) as possibly attributable to qualitative differences between the pools or the result of other factors such as seasoning (RTC loans are described as highly seasoned; conduit loans are described as typically newly-originated at the time of securitization). The average annual default rate on multifamily properties was 3.9 percent. This finding translates to a 32.8 percent cumulative default rate over 10 years, assuming no prepayments.

In another report, Fitch ICBA posts a table of single-A recession default probabilities by DCR category, adjusted to reflect stressful economic conditions, but not the mix of collateral and structural characteristics in the loans.[121] The default probabilities ranged from a low of 20 percent (>1.75 DCR) to a high of 80 percent (<0.49 DCR), with 40 percent representing the maximum cumulative default probability for positive (>1.00 DCR) cash flow loans.

A study of the commercial mortgage holdings of the life insurance industry finds that book value credit losses averaged 76 basis points per year over the 1972–1996 period, with an annualized volatility of ±31 basis points.[122] Using this study's assumed 30 percent loss severity rate, ten-year default rates are roughly equivalent to a maximum of 34 percent.

The studies cited above represent those that OFHEO believes best represent cumulative multifamily default rates under stressful economic conditions. Nevertheless, the studies are not entirely comparable to the stress test because they may not have analyzed loan performance over a period of time as stressful as the stress test. Additionally, they either did not address the type of multifamily product analyzed or stated specifically that only fixed-rate loans were included. Therefore, the range of cumulative default rates of 30–40 percent would not be applicable to multifamily ARMs. Further, the studies defined default more broadly than does the stress test. The stress test defines default as a foreclosure rather than a 60- or 90-day delinquency. This discrepancy means that, all else equal, the 30-40 percent default rate range found in the studies would be lower if OFHEO's narrower default definition were used. Because

[117] OFHEO tested Freddie Mac's model with the same Enterprise data used to estimate OFHEO's multifamily default model in the final rule. OFHEO found poorer overall goodness of fit results than those achieved with OFHEO's multifamily default model. OFHEO's multifamily default model in the final rule had a Hosmer-Lemeshow (HL) goodness of fit statistic of 32.192; (72.0 percent concordant, 24.2 percent discordant, 3.8 percent tied) compared with an HL statistic of 122.62; (63.3 percent concordant, 28.4 percent discordant, 8.3 percent tied) for Freddie Mac's model. Lower HL statistics indicate better goodness of fit. *See* David W. Hosmer, Jr. and Stanley Limeshon, *Applied Logistic Regression* (John Wiley & Sons 1990).

[118] ''Trends in Commercial Mortgage Default Rates and Loss Severity—1997 Update,'' *Structured Finance* (July 20, 1998).

[119] The term ''conduit loans'' refers to loans, most of which are newly originated, that are securitized by mortgage conduits, which generally are brokers.

[120] The data included loans on commercial property other than multifamily projects, *e.g.,* shopping centers or office buildings.

[121] ''Performing Loan Securitization Update,'' *Structured Finance* (March 16, 2000).

[122] Michael Giliberto, ''A Performance Benchmark for Commercial Mortgages,'' *Real Estate Finance* (Spring, 1997).

the rating agency and related studies, to varying degrees, include products of various levels of seasoning and quality, the range of results may be interpreted as a weighted average of default rates for a diversified portfolio of multifamily loans.

Taking the above factors into consideration, OFHEO found the rating agency findings are consistent with the results of OFHEO's multifamily default model in the final rule. Assuming zero prepayments, OFHEO finds a cumulative conditional default rate of 39 percent for a typical Enterprise fixed-rate loan.[123] Further, OFHEO finds that it is reasonable and appropriate to allow default rates in the stress test to vary with product type, product quality, and loan age. As a result, OFHEO has determined that the default rates derived directly from the application of the multifamily default model in the final rule to Enterprise fixed-rate loans will be used, without further adjustment or calibration.

(c) Multifamily ARM Analysis

The Enterprises did not provide default rates considered reasonable for managing multifamily ARM business, and OFHEO found no comparable rating agency or related analyses specifically addressing ARM default rates in stressful economic environments. However, OFHEO also did not model multifamily default rates separately for fixed-rate and ARM product in the final rule. The default models are identical. In their implementation, ARM loans default at higher rates than fixed-rate loans, all else equal, even if interest rates are held stable.[124] However, when interest rates ramp up (plummet) in the first year of the up-rate (down-rate) stress test, ARM loans experience payment shock (reductions), pushing current DCR lower (higher) at any level of NOI. In sharp contrast, fixed-rate loans, which by definition have constant payments, exhibit changes in current DCR that are driven only by changes in NOI. OFHEO finds that this is perfectly consistent with the stress test interest-rate environment mandated in the 1992 Act.

Assuming no prepayments, OFHEO finds a cumulative conditional default rate for a typical Enterprise ARM loan of 29 percent in the down-rate scenario and 97 percent in the up-rate scenario.[125] OFHEO found that ARM down-rate default rates are consistent with fixed-rate default rates, which are in turn consistent with data provided by the Enterprises and with rating agency analyses.

OFHEO also believes that the range of ARM up-rate default rates is not unreasonable given the experience of certain multifamily loans historically. OFHEO tested for the highest level of defaults observed for Federal Housing Administration (FHA) and Enterprise multifamily loans originated in 1979–1992 in contiguous states comprising five percent or more of the U.S. population for a period of two or more consecutive years. The worst weighted average default experience found in the FHA data was for 12 loans originated in 1987–88 in New England (CT, MA, ME, NH, RI, and VT) at 78 percent. The worst default experience for Enterprise multifamily loans—fixed-rate (289 state-year combinations), ARM (six state-year combinations) and combined (two state-year combinations)—was 100 percent. The third-highest level of Enterprise multifamily default experience was for six loans originated in 1979–80 (AR, CO, LA, MT, OK and WY) at 87 percent while the seventh-highest level of ARM default experience for the Enterprises was for six loans originated in 1984–86 (CT, MA, ME, NH, RI, VT) at 91 percent. OFHEO found these statistics useful in that they substantiate the fact that default rates of the magnitude found in the up-rate scenario for multifamily ARMs have indeed occurred and would be likely to recur in an economic environment such as the stress test. As a result, OFHEO has determined that the default rates derived directly from the application of the multifamily default model in the final rule to Enterprise ARM loans will be used, without further adjustment or calibration.

b. Multifamily Prepayment Model

The proposed rule used the following variables to determine prepayment rates for multifamily loans:

- Mortgage Age Variables—Used to capture change in the risk of prepayment as loans age.
- Relative Spread—Used to reflect the value to the borrower of the option to prepay and refinance.
- Current LTV—Used to capture the incentive for borrowers to refinance in order to withdraw equity from rental property.
- Probability of Qualifying for Refinance—Used to reflect the likelihood that a property financed by a balloon loan would qualify for a new loan, based on minimum requirements of 80 percent LTV or less and 1.20 DCR or more.
- Pre-balloon Refinance Incentive—Used to give extra weight to the relative spread in the two years prior to the balloon maturity to capture additional incentive to prepay balloon loans after the date the yield maintenance period ends, but before the balloon maturity date.
- Conventional Market Rate for Mortgages—Used to reflect the incentives for borrowers with ARMs to refinance into fixed-rate mortgages.
- Years-To-Go in the Yield-Maintenance Period—Used to capture the declining cost of yield maintenance to the borrower in the later years of the yield-maintenance period.

(i) Comments

Many comments addressed the proposed multifamily prepayment models. None were supportive of the proposed approach. Several of these comments suggested that the data are too limited to support the five separate models used in NPR2. The Enterprises and others expressed a view that the proposed rule incorporated incorrect assumptions about the cost to the borrower (and, therefore, about prepayment of loans) throughout the yield-maintenance or prepayment penalty period. Commenters also argued that the prepayment models were overly complex in the number of variables and the treatment of those variables. Most of these commenters contended that only a small percentage of loans prepay during the yield maintenance or prepayment penalty periods and, of those that do, virtually all are required to pay yield maintenance fees or prepayment penalties, which are designed to

[123] Using Enterprise data, OFHEO defined the typical Enterprise multifamily loan as a ten-year fixed-rate balloon loan, with an origination LTV of 80 percent and a current DCR at the start of the stress test of 1.20. Roughly 86 percent of Enterprise fixed-rate loans are from the New Book and 65 percent of fixed-rate loans qualify for the Ratio Update Flag. The mean age of fixed-rate loans at the start of the stress test is 48 months. The current DCR and origination LTV ranges represent the highest frequency distribution category for Enterprise fixed-rate loans. OFHEO produced the default rates using those ranges along with the mean loan age and share of New Book and Ratio Update loans (in lieu of 1 and 0 for those flags). In practice, those flags would either be 1 or 0.

[124] The New ARM Flag retracts much of the reduction in default risk that the New Book Flag conveys.

[125] Using Enterprise data, OFHEO defined the typical Enterprise multifamily ARM loan as one indexed to the 11th District Cost of Funds, with periodic rate caps and floors of two percent, annual payment caps of 7 percent and a 1.25 negative amortization limit, an origination LTV of 80 percent and a current DCR at the start of the stress test of 1.20. Roughly 50 percent of Enterprise ARM loans are from the New Book and 3 percent of ARM loans qualify for the ratio update treatment. The mean age of ARM loans at the start of the stress test is 91 months. The current DCR and origination LTV ranges represent the highest frequency distribution category for Enterprise ARM loans. OFHEO produced the default rates using those ranges along with the mean loan age and share of New Book and Ratio Update loans (in lieu of 1 and 0 for those flags).

compensate an Enterprise for loss of interest income. These comments suggested that, by not taking prepayment provisions properly into account, the stress test overstated prepayments, particularly in the down-rate scenario. The Enterprises both recommended that the final rule eliminate much of the complexity of the proposal in favor of using fixed prepayment percentages per month. Freddie Mac recommended zero percent in the up-rate scenario and, in the down-rate scenario, zero percent within yield maintenance or other prepayment penalty periods and 25 percent per year outside such periods. Fannie Mae recommended a similar approach, suggesting prepayments in the up-rate scenario of 0.02 percent per month and, in the down-rate scenario, 0.2 percent per month within prepayment penalty periods and two percent per month outside those periods.

(ii) OFHEO Response

OFHEO has considered the comments, studied the operation of the yield maintenance provisions in Enterprise multifamily loans agreements and reviewed the literature regarding multifamily prepayments. Given the limitations of Enterprise data, OFHEO has concluded that a prepayment model would not provide greater precision or risk sensitivity than a fixed schedule of prepayments in the two interest rate scenarios. OFHEO has also determined that the yield maintenance and other prepayment penalty provisions in Enterprise multifamily loans are sufficient either to discourage prepayments during prepayment penalty or yield maintenance periods or to ensure that the Enterprises are entitled to the specified compensation. However, modeling these various prepayment provisions would add additional complexity to the model, which OFHEO finds unwarranted given the small number of times yield maintenance or prepayment penalties are required to be paid.

OFHEO agrees with Freddie Mac with regard to the lack of multifamily prepayments in the up-rate scenario. Fannie Mae suggested there should be only negligible prepayments (0.02 percent per month) in the up-rate scenario. OFHEO recognizes that it is not cost effective for multifamily borrowers to prepay their mortgages at positive spreads of the market interest rate from the note rate and, as a result, they are highly unlikely to do so, particularly when yield maintenance or other prepayment penalties are involved. As a result, OFHEO will use zero prepayments in the up-rate scenario for multifamily loans.

OFHEO disagrees with Freddie Mac's recommendation of zero prepayments in the down-rate scenario inside prepayment penalty periods. Freddie Mac's recommendation of zero prepayments in the up-rate scenario (both inside and outside prepayment penalty periods) and in the down-rate scenario inside prepayment penalty periods suggests that Freddie Mac believes that Enterprise loans never prepay within yield maintenance or prepayment penalty periods. OFHEO recognizes that yield maintenance and other types of prepayment penalty provisions are effective deterrents to multifamily prepayments, as they raise (sometimes significantly) transactions costs, thereby requiring a larger drop in interest rates, all else equal, to trigger a prepayment decision. However, one study contends that prepayments do occur during yield maintenance and other prepayment penalty periods and should be priced for.[126] This study examined five different types of prepayment penalty structures finding that yield maintenance is the most effective type of the prepayment penalty structures studied. Also, Enterprise data provided to OFHEO for analysis show that just over seven percent of loans that prepaid had prepaid within their prepayment penalty periods.[127] Since Enterprise data are not sufficiently detailed to delineate different prepayment structures at this time, it is likely that the observed prepayments may be more related to one type of structure than to another or to the length of time remaining before the expiration of the penalty altogether. OFHEO also would expect the number of prepayments to be larger regardless of the prepayment penalty structure if the loan interest rate, taking into account prepayment penalty fees, was strongly in the money, as it would be in the down-rate scenario. As a result, OFHEO has specified 2 percent per year prepayments inside yield maintenance and other prepayment penalty periods during the down-rate scenario. This percentage allows marginally fewer prepayments than recommended by Fannie Mae (0.2 percent per month or 2.37 percent per year) due to the fact that OFHEO is not modeling the fee income generated by the limited number of prepayments inside prepayment penalty periods in the down-rate scenario.

OFHEO generally agrees with Freddie Mac's and Fannie Mae's respective recommendations of 25 percent per year and 2 percent per month (21.5 percent per year) prepayments outside of yield maintenance and prepayment penalty periods in the down-rate scenario. One study found that the most important determinant of multifamily prepayment was the ratio of the mortgage note rate to the current market interest rate.[128] Using coefficients provided in the study and assuming a newly originated loan (because parameter estimates for the age function were not provided), OFHEO found a 29 percent per year prepayment rate for multifamily loans outside of yield maintenance and other prepayment penalty periods, confirming the reasonableness of Fannie Mae's and Freddie Mac's estimates. Additionally, in the Enterprise data, OFHEO found extreme differences in multifamily prepayments during and after prepayment penalty periods. This observation is supported by a study that finds that prepayments are typically close to zero within prepayment penalty periods, then spike up in a "hockey stick" fashion as soon as the prepayment penalty period expires.[129] Further, another study found that, in general, multifamily and other commercial borrowers are more "ruthless" or have greater interest rate sensitivity than, for example, single family borrowers, making them more likely to prepay at any given level of negative spread between market rates and note rates, particularly when transactions costs such as prepayment penalties are not at issue.[130] For these reasons, OFHEO has decided to specify 25 percent prepayments per year outside yield maintenance and other prepayment penalty periods in the down-rate scenario. This specification is consistent with the mid-point of the 21 percent to 29 percent range provided by

[126] Qiang Fu, Michael LaCour-Little and Kerry Vandell, "Multifamily Prepayment Behavior and Prepayment Penalty Structure" (Working Paper, December 21, 1999).

[127] According to Enterprise data through 1999 submitted to OFHEO for analysis, 15 percent of Enterprise multifamily loans have yield maintenance or other prepayment penalty provisions. Of those, 9 percent (660 loans) terminated in or before 1999—the last recorded year of data. Of those that terminated, 113 loans had prepaid through 1999. Of those, 8 loans (7.1 percent) prepaid within their prepayment penalty periods and 105 loans (93 percent) prepaid outside their prepayment penalty periods. The remaining 547 were loans that had not prepaid as of the end of 1999.

[128] Qiang Fu, et al., *supra* n. 126.

[129] Jesse M. Abraham and Scott Theobald, "A Simple Prepayment Model of Commercial Mortgages," *Journal of Housing Economics* (1995).

[130] James R. Follain, Jan Ondrich, and Gyan Sinha, "Ruthless Prepayment: Evidence from Multifamily Mortgages," 41 *Journal of Urban Economics* (1997).

Freddie Mac, Fannie Mae and in the literature.

c. Multifamily Loss Severity Calculation

To determine loss severity rates on all conventional multifamily loans, other than NT loans covered by repurchase agreements, NPR2 used the same cost and revenue elements and discounting procedures used for conventional single family loans, except that property values were not updated to determine the loss of loan principal balance. The cost and revenue components were averages from Freddie Mac real estate owned (REO) originated in the 1980s. Loss severity rates on NT loans subject to repurchase agreements were set at a fixed rate based upon Enterprise historical experience and seller/servicer claim rates for 90-day delinquent multifamily loans. For FHA loans, the severity rate was set at three percent of UPB to reflect the cost of assigning defaulted loans to the Department of Housing and Urban Development.

Several comments addressed the loss severity calculations proposed in NPR2.[131] In general, commenters did not object to the methodology employed by OFHEO. They did, however, suggest that the loss severity rates arrived at with this approach were higher than industry averages and recommended that OFHEO simply apply a uniform severity rate to all multifamily loans. At a minimum, commenters recommended that OFHEO assess loss severity rates against industry standards as guidelines for reasonableness, as they had similarly suggested for multifamily default rates. Specifically, Fannie Mae and Freddie Mac commented that the data available to OFHEO, primarily Freddie Mac Old Book loans, were an inappropriate sample to estimate multifamily loss severity. Because of changes in the Enterprises' current loan programs, they contended, the severity rates to be expected on newer loans would be significantly lower than reflected in the data.

OFHEO rejected the suggestion that a uniform severity rate be applied to each multifamily loan in each period of both the up- and down-rate scenarios. Throughout the stress test, rental vacancy rates increase to a peak of 17.5 percent and rent growth is negative for over twenty consecutive months. In an economic situation replicating the ALMO benchmark region and time period, the revenue and cost components of multifamily REO while in inventory, as well as recovery rates on REO sales, would not remain fixed. Studies have shown that multifamily property values fall significantly during regional economic recessions, leading to lower recovery rates on REO.[132] Likewise, rental income would decline as vacancy rates rise. Further, some costs incurred during the REO holding period, such as attorney's fees, would likely remain fixed while others, such as property operating expenses, may shrink as tenants vacate; they may also remain the same or increase as landlords attempt to attract new tenants to replace those that have vacated. OFHEO concluded that fixed loss severity rates for Enterprise multifamily REO would not reflect the requirement that severity rates in the stress test be reasonably related to the conditions of the benchmark loss experience.

OFHEO also concluded that updating the NPR2 methodology with additional data from the Enterprises would not be consistent with the 1992 Act. Given the requirements of the 1992 Act that the stress test must reflect a worst-case loss experience, single family loss severity rates are calculated using cost components, where available, for the ALMO benchmark loans. It would, therefore, be inappropriate to update the multifamily loss severity components simply because newer data from better economic scenarios reflect lower losses. In contrast, OFHEO found it appropriate to update the data used to estimate the multifamily default model, because the model imposes benchmark conditions through the use of ALMO benchmark rent growth and vacancy rates.

OFHEO has determined to use the revenue and cost components of multifamily loss severity as well as the REO recovery rates as published in NPR2, as they represent worst-case Enterprise losses.[133] A simple adding up of the costs components of those figures (without considering discounting, credit enhancements or passthrough interest on sold loans), yields a loss severity rate of 54 percent. OFHEO did, in fact, find higher loss severity rates. Fitch IBCA found loss severity rates ranging from 32 percent to 58 percent on bulk sales of RTC assets. Additionally, and in that same report, Fitch explains that Freddie Mac reports that, if a default occurs, on average 45 percent of the loan balance is lost. Actual Freddie Mac loss severities, however, ranged from 8 percent in the Northeast to 52 percent in Alaska. Finally, in describing Fannie Mae's 70–75 percent recovery rates on multifamily REO, Fitch concludes that their historical loss information did not include recoveries during adverse market conditions.[134]

OFHEO has simplified the loss severity calculation in the final rule. The six separate loss severity calculations proposed in NPR2 are replaced by one loss severity equation, which eliminates the redundancy in the first four equations. Those equations differed only in that one of them accounted for passthrough interest on sold loans and one did not. Similarly, one of them accounted for loss-sharing receipts on loans covered by loss-sharing agreements and one did not. Passthrough interest on sold loans and loss-sharing receipts remains part of the loss severity calculation. However, the final rule simply calculates four months of passthrough interest on sold, but not on retained loans, and loss-sharing receipts, if applicable, are included with other forms of credit enhancements.

In addition, the separate methodology used in NPR2 for arriving at loss severity for NT loans with repurchase agreements has been eliminated in the final rule. OFHEO determined that the NPR2 loss severity of 39 percent for these loans, arrived at by multiplying a 70 percent historical foreclosure rate by 56 percent (the share of Freddie Mac's 90-day delinquencies that end in foreclosure or other costly loan resolutions), is no longer applicable. OFHEO determined that the correct place to account for the potential cure rate of 90-day delinquent loans (as opposed to those that ultimately would end in foreclosure), is in the multifamily default model, rather than in the loss severity calculation. Appropriately, OFHEO included a correction there.[135]

[131] NPR2 actually proposed six severity treatments: (1) retained cash loans without recourse, (2) sold cash loans without recourse and NT loans without repurchase, (3) retained cash loans with recourse, (4) sold cash loans with recourse, (5) NT loans with repurchase, and (6) FHA loans. The NT distinction has been eliminated in the final rule, as discussed above at III.I.3.a.i., Negative Equity and Current LTV Variables and no comments were received about the three percent severity rate imposed upon FHA loans. For these reasons, references to the NPR2 approach are to the first four treatments, unless otherwise indicated.

[132] ''Commercial Mortgage Stress Test Research,'' *Structured Finance* (October 23, 1998); ''Trends in Commercial Mortgage Default Rates and Loss Severity—1997 Update,'' *Structured Finance* (July 20, 1998).

[133] For simplicity, foreclosure costs and operating losses are added together as net REO holdings costs.

[134] ''Commercial Mortgage Stress Test Research,'' *supra,* note 132.

[135] In multifamily default modeling, the default event for NT loans repurchased by seller/servicers must be a 90-day delinquency, as OFHEO was not supplied with information regarding the final resolution of these loans. OFHEO adjusted for the broader definition of defult for NT loans (90-day delinquency) relative to the one used for all other multifamily loans (foreclosure) by undersampling NT defaults for inclusion in the historical estimation data set prior to model estimation. A stratified random sample of loans missing both origination and acquisition DCR was taken for

Continued

For FHA loans, the final rule retains the severity rate of three percent of UPB that was proposed in NPR2 to reflect the cost of assigning defaulted loans to the Department of Housing and Urban Development.

J. Other Credit Factors

To reflect counterparty or security defaults during the stress period, NPR2 proposed to reduce the payments from each counterparty or security to the Enterprises by an amount, or ''haircut,'' determined by the public credit rating of the counterparty or security. These haircuts were phased in linearly over the 120-month stress period beginning in the first month. OFHEO received a considerable number of comments on the level, timing, and calculation of the haircuts, which are discussed below by topic.

1. Haircut Levels for NonDerivative Counterparties and Securities

For all securities and counterparties except derivative contract counterparties, NPR2 proposed ten-year cumulative haircuts of ten percent for counterparties and securities rated triple-A, 20 percent for double-A, 40 percent for single-A, and 80 percent for triple-B and below and for unrated counterparties or securities. These haircuts were based on a consideration of Moody's 1998 study of corporate bond defaults, Standard and Poor's (S&P) approach to rating structured mortgage securities, and Duff & Phelps' (D&P) approach to evaluating credit supports provided by mortgage insurance companies. [136]

a. Comments

A number of commenters, including the Enterprises and several Wall Street firms, disagreed with OFHEO's methodology, asserting that the resulting haircuts were too severe and not representative of historical experience. In particular, they suggested that OFHEO's proposed haircuts were greater than those that would be implied by the Great Depression, citing the 1958 study of corporate bonds by W. Braddock Hickman.[137] These commenters concluded that the default rates implied by OFHEO's haircuts were too high.

Freddie Mac questioned the appropriateness of basing stress test haircuts on S&P's approach, because S&P uses it to evaluate structured finance securities. Structured finance transactions, Freddie Mac asserted, require credit support levels to cover risks not faced by the Enterprises because in such transactions there is little ongoing risk management capability, no diversification across pools, and no ability to retain earnings. Instead, Freddie Mac recommended basing the haircuts on both default and recovery rates. It suggested developing default rates by 1) comparing mortgage default rates associated with the benchmark loss experience to average mortgage default rates, stating that the former are roughly three times higher than the latter, and 2) applying this multiple to Moody's average ten-year cumulative corporate bond default rates since 1970. Freddie Mac provided an analysis supporting cumulative haircuts of 1.2 percent for triple-A, 1.5 percent for double-A, 2.3 percent for single-A, and 6.6 percent for triple-B and below and unrated, and recommended that these haircuts be adjusted downward by at least 30 percent in the up-rate scenario, to reflect general price inflation. Freddie Mac suggested that OFHEO assume a 50 percent recovery rate for defaulting mortgage insurers, citing the liquidation of a mortgage insurance company in the 1980's, and a 50 percent liquidation value for defaulting securities, citing Hickman and Moody's. The Moody's study used defaulting bond prices as the basis for evaluating recoveries; the Hickman study evaluated actual recoveries for bond defaults resolved before 1944, and January 1, 1944, prices for bonds trading below their amortized book value at that time.

Fannie Mae objected to OFHEO's reliance on rating agency approaches because it believes they are inconsistent with the data in the post-1970 period and not reasonably related to the benchmark loss experience. Based on its own analysis, Fannie Mae recommended default-based haircuts of three percent for triple-A, four percent for double-A, eight percent for single-A, and twelve percent for triple-B and below and unrated, and suggested that first-year defaults should not exceed 0.50 percent for triple-A-rated and 1.0 percent for double-A and single-A rated credits. Citing Hickman and Moody's, Fannie Mae described its suggested default rates as ''very conservative and substantially in excess of bond default performance over the benchmark time period'' Fannie Mae further suggested that these haircuts be reduced by an assumed liquidation value of 50 percent for securities, to account for recoveries, and by insurance premiums and servicing fees, to offset losses on insurer and recourse counterparty defaults. Another commenter pointed out that servicing fees under Fannie Mae's multifamily DUS program include a substantial risk premium.

In general, GE Capital supported OFHEO's haircut proposal except for the treatment of interest rate and currency derivative contract counterparties, which is discussed below under III.J.2., Derivative Contract Counterparties. In its reply comments, GE Capital pointed out that OFHEO's haircuts are consistent with rating agency discounts of reinsurance benefits, but noted that by imposing them over time, OFHEO's haircuts are far less than those discounts. MICA also supported OFHEO's haircuts but argued that triple-A and double-A mortgage insurers should be treated more favorably than other counterparties, with no distinctions between triple-A and double-A rated mortgage insurers. (*See* section III.J.5., Mortgage Insurer Distinctions below.)

In their reply comments, GE Capital and MICA criticized the way the Enterprises used the Hickman and Moody's studies to suggest lower haircut levels. They noted that the Enterprises included data from the Hickman study on defaults only for large issues, which are generally substantially lower than for smaller issues of the same rating, and that the Enterprises had insufficient basis for their extrapolation of ten-year default rates from quadrennial data. They also questioned the Enterprises' exclusion of earlier corporate default experience in their reliance on Moody's average default rates since 1970. GE Capital

inclusion in the estimation data set. Those loans sampled were overwhelmingly NT (68 percent), seasoned-at-acquisition (64 percent), and ARMs (63 percent). By contrast, loans with either origination or acquisition DCR were overwhelmingly non-NT (90 percent), newly-originated at Enterprise acquisition (80 percent), and fixed-rate mortgages (95 percent). A 10 percent stratified random sample of loans missing both origination/acquisition DCR yielded 2,498 loans (157 defaults and 2,303 non-defaults). The default sample wsa reduced to 126 loans based upon an estimated cure rate of 30 percent for the portion of the loans missing both origination and acquisition DCR that were NT.

[136] ''Historical Default Rates of Corporate Bond Issuers, 1920–1997,'' Moody's Investors Service, February 1998; S&P's Structured Finance Criteria,'' Standard & Poor's Corporation, 1988; and ''Evaluation of Mortgage Insurance Companies,'' Duff & Phelps, November, 1994. The Moody's study, which showed cumulative default rates over various time horizons for each rating category, suggests that the ten-year cumulative default rate roughly doubles for each one-level drop in rating category. In rating structured mortgage securities, S&P discounts the claims-paying ability of mortgage insurers in a double-A stress environment by 20 percent for double-A-minus-rated mortgage insurers, and 60 percent for single-A-rated insurers. In rating mortgage insurers in a triple-A stress environment, D&P discounts double-A rated reinsurers by 35 percent, single-A-rated reinsurers by 70 percent, and triple-B-rated reinsurers by 100 percent.

[137] W. Braddock Hickman, *Corporate Bond Quality and Investor Experience*, National Bureau of Economic Research (1958).

pointed out that using an average observation plus three standard deviations would be a more statistically valid method of establishing stress test default rates than using a multiple of three, and would result in default levels significantly higher than those suggested by the Enterprises but lower than those reflected in the haircuts proposed by NPR2.

Neither GE Capital or MICA favored reflecting recoveries, primarily because they regard the Enterprises' assumptions as questionable and unsupported by authoritative data.[138] Both disagreed that defaulted bond prices serve as a proxy for recovery rates on mortgage credit enhancements and questioned whether mortgage insurance premiums (especially if paid up front) or servicing rights would offset losses on mortgage credit enhancements to any significant extent.

World Savings asserted that the haircut differentials between triple-A, double-A and single-A ratings in NPR2 were too great, citing Moody's and S&P's rating definitions. It proposed haircuts for these ratings of five percent, ten percent, and fifteen percent, respectively, with significantly larger haircuts applied to lower-rated institutions, particularly those with non-investment grade ratings.

b. OFHEO's Response

In NPR2, OFHEO pointed out certain conceptual similarities between its approach to discounting for counterparty risk and those of the rating agencies, but did not rely on rating agency methodologies for default levels. For example, OFHEO's use of haircuts to reflect losses due to counterparty failure is similar to the methodology of Moody's, S&P and D&P.[139] OFHEO's approach is also similar to that of S&P and D&P in that in the proposed stress test, failing counterparties meet some but not all of their obligations (i.e., over time, haircuts increase to a maximum level), rather than meeting all of their obligations until the counterparty fails (i.e., haircuts are constant over time). OFHEO also observed that Moody's 1998 bond study revealed that default rates roughly double for each drop in ratings and employed a similar relationship in defining haircuts for the various rating categories. OFHEO does not believe that consideration of these concepts is inappropriate for the purposes of the stress test, regardless of the purpose for which the rating agency methodologies were developed. With respect to default levels, OFHEO noted in NPR2 that the default levels reflected in maximum haircuts included in NPR2 are higher than recent experience and, according to Moody's 1998 study, six to ten times the average ten-year cumulative default levels from 1920 through 1997.

In the course of evaluating the recommendations for lower haircuts, OFHEO reviewed Moody's 2000 bond study,[140] as well as the Hickman study. According to Hickman, the worst four-year cumulative default rates for investment grade corporate securities were 6.2 percent (1932–35) and 7.0 percent (1912–15).[141] In order to compare these rates with the historical average, OFHEO extrapolated ten-year rates consistent with these four-year rates, which were 21.0 and 23.7 percent, respectively.[142] These rates are 4.3 and 4.9 times greater than the historical average ten-year rate for the period from 1920–1999 of 4.85 percent from the Moody's study. As shown in Table 5 below, the default levels the Enterprises proposed as a basis for stress test haircuts (which they recommended be reduced by 50% to account for recoveries) reflect significantly lower multiples of Moody's average historical 10-year cumulative default rates than the extrapolated ten-year default rates that occurred during the most stressful periods identified by Hickman. Based on this analysis, OFHEO concluded that while the default rates reflected in the haircuts included in NPR2 were high, the default rates proposed by the Enterprises are too low.

TABLE 5.—COMPARISON OF HISTORICAL 10-YEAR CUMULATIVE DEFAULT RATES WITH THOSE RECOMMENDED BY THE ENTERPRISES AS A BASIS FOR STRESS TEST HAIRCUTS

Rating	(A) Moody's Average Rates 1920–1999 [1]	(B) Freddie Mac's Recommended Haircuts	(B)/(A)	(C) Fannie Mae's Recommended Haircuts	(C)/(A)
AAA	1.09%	2.3%	2.1×	3.0%	2.8×
AA	3.10%	2.9%	1.1×	4.0%	1.3×
A	3.61%	4.7%	1.3×	8.0%	2.2×
BBB	7.92%	13.2%	1.7×	12.0%	1.5×

[1] "Historical Default Rates of Corporate Bond Issuers, 1920–1999," Moody's Investors Service, January 2000, at 27.

With respect to the relationships among cumulative default rates for credits in different rating categories, the Moody's data for 1920–1999, as reflected in the table, show cumulative defaults roughly tripling between the triple-A and double-A categories, increasing by 15% from double-A to single-A, and then doubling from single-A to triple-B, rather than doubling in every case.

Haircuts included in the final rule reflect consideration of the relationship between cumulative default rates in normal and stressful times, the ameliorating effect of phasing in haircuts over time, mixed commenter opinion with respect to recoveries, the potential for insurance premiums or servicing fees to partially offset losses on mortgage credit enhancements, as well as the relationships among cumulative default rates for credits in different rating categories. OFHEO

[138] However, MICA supported lower haircuts for triple-A- and double-A-rated mortgage insurance companies relative to any other counterparties, regardless of rating, as discussed below under "Rating Categories."

[139] On June 1, 2000, D&P merged with Fitch ICBA. The merged company is called "Fitch."

[140] "Historical Default Rates of Corporate Bond Issuers, 1920–1999," Moody's Investors Service, January 2000.

[141] Hickman, at 189.

[142] These rates were extrapolated by multiplying Hickman's 4-year cumulative default rates from 1932–1935 and 1912–1915 by the ratio of Moody's historical average 10-year rate from 1920–1999 of 4.85 percent to Moody's historical average 4-year rate of 1.43 percent. (Moody's, at 27.)

determined that the haircuts proposed in NPR2 should be reduced and phased in more quickly. In the final rule, maximum haircuts for securities and counterparties other than derivative contract counterparties are lowered from 10 to 5 percent for those rated triple-A, from 20 to 15% for double-A, from 40 to 20 percent for single-A, and from 80 to 40 percent for triple-B. They are phased in linearly over the first five years of the stress period and remain constant thereafter.

2. Derivative Contract Counterparties

In recognition of the routine use of collateral pledge agreements with interest rate and foreign-currency derivative contracts, NPR2 proposed haircuts for derivative contract counterparties[143] that are lower than haircuts for other counterparties. Collateral posted under these agreements is continuously re-evaluated, which limits an Enterprise's risk exposure. For counterparties to interest rate contracts and foreign currency derivative contracts that fully hedge their corresponding exchange rate exposure, NPR2 proposed ten-year cumulative haircuts of two percent for triple-A-rated counterparties, four percent for double-A-rated counterparties, eight percent for single-A-rated counterparties, and 16 percent for counterparties rated triple-B and below and unrated counterparties. In the case of derivative contracts that fully hedge the foreign exchange risk of foreign-currency-denominated debt, NPR2 proposed that the stress test increase the amount in dollars owed by an Enterprise by the derivative haircut percentage. (*See* section III.J.4., Foreign Exchange Risk) below for a discussion of the treatment of any unhedged foreign exchange risk.)

a. Comments

Freddie Mac and Morgan Stanley suggested eliminating the haircuts for derivative contracts entirely, stating that counterparty risk for derivative contracts would more properly be characterized as management and operations risk, and should therefore be subsumed in the 30 percent management and operations risk add-on. Fannie Mae and Freddie Mac proposed, alternatively, that OFHEO apply minimum capital treatment to derivative contract exposure rather than attempting to model cash flows. On the other hand, a number of commenters supported applying the proposed haircuts for mortgage credit enhancement counterparties to interest rate and foreign currency derivative contract counterparties. GE Capital was among these commenters, but favored applying NPR2's haircut for triple-A derivative contract counterparties to contracts collateralized by cash or Treasury securities as of the start of the stress test, to the extent of such collateral coverage.

b. OFHEO's Response

OFHEO rejects the idea that derivative contract counterparty exposure constitutes a management or operations risk, since the magnitude of these exposures, even as mitigated by collateral pledge agreements, is driven by interest rate, credit, and foreign currency risk factors. OFHEO disagrees that minimum capital treatment is appropriate for derivative contract counterparty exposure for two reasons. First, for interest rate derivative contracts, exposure and related collateral requirements likely will vary dramatically between the up- and down-rate scenarios. A simple leverage ratio would not capture such fluctuations. Second, the amount of collateral pledged at the start of the stress test, an important determinant of the minimum capital requirement, will have little relationship to future exposures or the related collateral requirements of derivatives contracts throughout the stress test. For this second reason, OFHEO also disagrees with GE Capital's suggestion that the stress test apply lower haircuts to collateralized exposure on interest rate derivative contracts as of the start of the stress test.

The final rule retains the haircuts for derivative contract counterparties proposed in NPR2 for securities rated triple-A, double-A, single-A and triple-B. Like other haircuts, they are phased in linearly in the first five years of the stress period. Haircuts for derivative contract counterparties are now higher relative to the haircuts applied to other counterparties as a result of the reduction in haircuts for those other counterparties in the final rule, but they remain substantially less than haircuts for nonderivative counterparties.

For certain derivative contract counterparties, the practical difficulties of modeling the instruments according to their terms require the use of simplifying assumptions. (*See,* e.g. discussion under section III.J.4., Foreign Exchange Risk.) For these few instruments, no haircut is applied. When the simplifying assumptions are no longer needed, these counterparties will be subject to haircuts comparable to those for other derivative counterparties.

3. Rating Categories

NPR2 proposed applying haircuts based on public ratings and treating unrated counterparties and investments as if they were rated triple-B and below, the lowest haircut category. In the case of different ratings from different rating agencies, the lowest rating would be used.

a. Comments

Most commenters who addressed the issue supported the use of public ratings, but there was disagreement about OFHEO's treatment of below-investment-grade and unrated counterparties and securities. Some commenters suggested that no credit should be given in the stress test for enhancements provided by unrated or below-investment-grade counterparties. Although the Enterprises supported the rating categories OFHEO proposed, Fannie Mae, along with other commenters, asserted that the assignment of unrated seller/servicers to the triple-B category overstated counterparty risk, especially with respect to Delegated Underwriting and Servicing (DUS) lenders, whose agreements are typically supported by other credit enhancements, such as letters of credit. For these lenders, Fannie Mae suggested reliance on an Enterprise's internal rating classifications. Fannie Mae also suggested reliance on internal ratings when fewer than two ratings are available, or when additional contractual agreements supporting the counterparty obligation exist. In addition, Fannie Mae suggested that relationships with corporate parents might justify an assignment of a parent company's rating to its unrated seller/servicer subsidiaries (rather than the triple-B rating proposed for unrated seller/servicers) for purposes of the stress test. Both Fannie Mae and Freddie Mac recommended that, in the case of split ratings, the stress test apply the median.

b. OFHEO's Response

The final rule makes no change to the proposed treatment of split ratings because OFHEO believes that a conservative evaluation of risk is appropriate for regulatory purposes. Consistent with that belief, and in response to comments, the final rule

[143] For the purposes of the risk-based capital regulation, the term "derivative contract" refers only to interest rate, foreign currency, and similar derivative contracts for which values are easily determined; i.e., which can easily be marked to market. It does not include derivative securities or credit derivative contracts, for which markets are not sufficiently developed to facilitate accurate market valuations. (*See* III.K., Mortgage Credit Enhancements, for a fuller discussion of credit derivatives.)

introduces a new haircut category for nonderivative securities and counterparties (except seller/servicers and GSEs) that are rated below investment grade or unrated. The new haircut category recognizes the significant distinctions between the default experience of triple-B- and double-B-rated corporate bond issuers, as reflected in the Moody's data, and the fact that the lack of a public rating often reflects the speculative nature of the credit. The new haircut category is assigned a haircut of 100 percent and is applied in the first month of the stress period. The effect of applying a 100 percent haircut in the first month of the stress period is to write off as a loss below-investment-grade or unrated securities (except securities issued by GSEs), and to give no credit for credit enhancements or derivatives provided by below-investment-grade or unrated counterparties (except seller/servicers). However, to provide for investments that are unrated for reasons other than an inability to obtain a public rating, OFHEO reserves the right to make a different determination on an unrated counterparty or security that would otherwise be subject to the 100 percent haircut, on a case-by-case basis, if an Enterprise presents information about the investment that persuades OFHEO that a different rating is warranted.

The Enterprises do not currently contract with mortgage insurers or derivative contract counterparties that are below investment grade or unrated, and OFHEO has issued policy guidance [144] to the Enterprises emphasizing the importance of high-quality investments for their liquidity portfolios. OFHEO would view the practice of investing in below-investment-grade securities or contracting with below-investment-grade counterparties unfavorably. The introduction of the new haircut category should have little impact on the Enterprises' capital requirements as they currently conduct their businesses, but it will make the risk-based capital regulation consistent with OFHEO's regulatory policy on below-investment-grade investments.

Under the final rule, unrated seller/servicers continue to be treated as if they were rated triple-B, in recognition of the ongoing nature of the Enterprises' relationship with seller/servicers and the contractual leverage available to the Enterprises to manage their exposure to counterparty risk, as well as the credit protection afforded by servicing income and mortgage insurance premiums.

OFHEO rejected the recommendation to use internal Enterprise ratings for unrated seller/servicers, for reasons articulated in NPR2.[145] Neither the Enterprises' internal ratings methodologies nor the ratings themselves are publicly available, and they may not be consistent with each other. OFHEO also declines to assign the rating of a parent company to its unrated seller/servicers subsidiary, just as the NRSROs will not impute a corporate parent's rating to a derivative dealer or credit enhancement counterparty in the context of rating a securities transaction. To do so would require OFHEO itself to ''rate'' the entity, considering the nature and extent of a parent's liability for an entity's obligations.

OFHEO recognizes the desirability of making finer risk distinctions between unrated seller/servicers in a risk-based capital regulation. Therefore, following adoption of this regulation OFHEO will evaluate alternative approaches for assessing the risk of unrated seller/servicers, including establishing criteria under which Enterprise internal ratings could be used, and encouraging the attainment of a NRSRO rating by seller/servicers.

In response to comments that NPR2 did not reflect adequately the risk-mitigating requirements of the DUS program, OFHEO notes the following. DUS lenders, like all seller/servicers, benefit from this favored treatment in addition to the general reduction in haircut levels. Further, the letters of credit that DUS lenders typically post to back up their loss sharing agreements will be modeled, providing a significant offset to the haircut. In addition, DUS lenders are among those who benefit from the inclusion of two variables in the multifamily default model, the New Book indicator and the Ratio Update Flag. The New Book indicator captures the lower default probability for loans acquired under the Enterprises' current multifamily lending programs compared to loans acquired under early loan programs. The Ratio Update Flag reflects the lower default probability for loans on which the underwriting ratios have been reviewed and adjusted at acquisition to Enterprise standards. The effect of these various elements of the stress test is to create substantially lower losses on loans from the DUS or similar programs than on loans that share none of the risk mitigating factors of DUS loans.

An exception to the new haircut category is also made for unrated securities issued by other GSEs. NPR2 stated that the stress test reflects no credit losses on securities issued by Ginnie Mae or the Enterprises,[146] but did not address whether a haircut should be applied to payment due to an Enterprise from securities issued by another GSE. The final rule clarifies that this statement was not intended to apply to securities issued by another GSE held by an Enterprise as an investment (including a Fannie Mae security held by Freddie Mac or a Freddie Mac security held by Fannie Mae). Such unrated securities are treated as AAA-rated securities and haircut accordingly.

To summarize, the haircuts used in the final regulation to discount for all counterparty risk are set forth by rating category and counterparty type in Table 6.

TABLE 6.—HAIRCUTS BY RATING CATEGORY IN FINAL RULE

Ratings Classification	Derivatives	Non-derivatives
AAA	2%	5%
AA	4%	15%
A	8%	20%
BBB	16%	40%
Below BBB & Unrated [1]	100%	100%

[1] Unrated, unsubordinated obligations issued by other GSEs are treated as AAA. Unrated seller/servicers are treated as BBB. Other unrated counterparties and securities are subject to a 100% haircut applied in the first month of the stress test, unless OFHEO specifies another treatment, on a showing by an Enterprise that a different treatment is warranted.

4. Foreign Exchange Risk

In NPR2, OFHEO proposed to model foreign currency derivative contracts that fully hedge the foreign exchange risk of liabilities issued in foreign currencies as synthetic dollar-denominated liabilities. Under the proposal, appropriate haircuts would be determined by increasing amounts of principal and interest due on the synthetic liabilities by the amount of the derivative contract haircut appropriate to the counterparty.[147] (Applying the same approach to contracts hedging

[144] OFHEO Director's Advisory, *Non-mortgage Liquidity Investments,* PG–00–002 (Dec. 19, 2000).

[145] 64 FR 18155, April 13, 1999.

[146] *See id.*

[147] Theoretically, the haircut should be applied based on the amount of foreign currency to be paid to the Enterprise in the transaction. However, these amounts cannot be calculated, because foreign currency values are not projected in the stress test. Therefore, for purposes of computing a capital number for a currency swap, using the dollar side of the transaction is used as the basis to determine total cash flow haircuts.

foreign-currency-denominated assets, amounts received from a synthetic asset would be reduced by the same percentage.) To the extent foreign exchange risk exposure is not fully hedged, NPR2 proposed to assume an adverse percentage change in the value of the foreign currency versus the United States dollar equal to the amount of the percentage change in the ten-year CMT, which resulted in a significantly larger haircut.[148] OFHEO did not propose to apply netting provisions to foreign currency derivatives, because netting of all of a counterparty's derivative contracts would require the modeling of all of their cash flows. Accordingly, instead of modeling all cash flows for foreign-currency-denominated contracts, NPR2 simply adjusted the debt payment amounts.

a. Comments

Fannie Mae supported the modeling of foreign-currency-denominated debt and associated foreign currency swaps as synthetic dollar-denominated instruments, but commented that the resulting haircuts were excessive. It pointed to the lack of netting of payments within an individual swap and among payments across all swaps with a single counterparty, and the fact that the haircuts would be consistently applied, whether a derivative was ''in the money'' or out ''of the money.'' [149] The Enterprise suggested that for foreign exchange contracts, the minimum capital standard, which ''provides for generally higher capital charges for foreign exchange contracts than other types of derivative contracts,'' should apply. Fannie Mae also commented that OFHEO should delete from the final regulation the NPR2 treatment for unhedged foreign currency transactions, because none currently exist in Fannie Mae's book of business. Finally, Fannie Mae objected to a footnote in the preamble to NPR2 that indicated that the same type of treatment used for foreign currency derivatives would be applied to any instrument that was denominated in or linked to units or values that are not included in the stress test.[150] Fannie Mae stated that this footnote would create a bad precedent and that any such instrument should be dealt with on a case-by-case basis.

b. OFHEO's Response

The final rule does not adopt Fannie Mae's recommendation to employ netting within a swap or among all swap payments with a single foreign currency swap counterparty. The synthetic debt approach is inconsistent with netting because it effectively models only the dollar-denominated pay side of a swap, not the foreign-currency-denominated receive side. Without modeling both sides of a swap, netting of the payments associated with such derivatives is not feasible. OFHEO takes an appropriately conservative approach by treating foreign currency derivatives as always being ''in the money'' because, without explicitly modeling foreign currencies, there is no basis for determining whether a contract is ''in'' or ''out of the money.'' OFHEO also rejects the application of minimum capital treatment for derivatives for reasons discussed above at section III.J.2.b., OFHEO's Response. However, because foreign currency values are not projected in the stress test, OFHEO has decided not to apply haircuts to foreign currency swap counterparties by adding the haircut percentage to the pay side of the swap. As a simplifying assumption, no haircut is applied in the final rule. However, OFHEO continues to believe that some haircut is appropriate and will continue to explore whether some other methodology is more appropriate.

Notwithstanding Fannie Mae's comment that it currently has no unhedged foreign currency exposure, it is conceivable that unhedged positions could arise, because the Enterprises issue securities denominated in foreign currencies and use foreign currency derivatives to hedge the exchange risks associated with these securities. For this reason, the final rule retains a treatment for them. If the Enterprises follow their current policies and continue to use swaps to fully hedge all foreign currency risk, the treatment of unhedged positions in the regulation will be a moot issue. If these policies change, or through error or inadvertence are adhered to imperfectly, the regulation includes an appropriately conservative treatment to deal with any instruments that are left unhedged.

In regard to the footnote related to instruments that are denominated in, or linked to, units or values that are not included in the stress test, OFHEO will consider such instruments, including unhedged derivatives (other than standard interest rate or foreign currency derivatives) or other unusual instruments that appear at the Enterprises, on a case-by-case basis. Where the stress test includes a specific treatment or the capability to model the instrument according to its terms, OFHEO will do so. Other instruments may be accorded alternative modeling treatments in accordance with section 3.9, Alternative Modeling Treatments, of the Regulation Appendix. The footnote was intended to indicate that a treatment similar to that for unhedged foreign currency exposures would likely be appropriate for such instruments. If the instruments involve a new activity for an Enterprise, it should notify OFHEO as soon as possible of the existence of the transaction and request an estimated treatment in the stress test in accordance with section 3.11, Treatment of New Enterprise Activities, of the Regulation Appendix.

5. Mortgage Insurer Distinctions

NPR2 proposed haircuts that double for every decrease in rating category for all securities and counterparties, other than unhedged foreign currency derivative contract counterparties, without distinguishing between types of counterparties.

a. Comments

MICA and Triad GIC argued for preferred treatment for mortgage insurers rated triple-A and double-A over securities and other types of counterparties, and, along with Neighborhood Housing, opposed differentiating between mortgage insurers rated triple-A and double-A. MICA emphasized that mortgage insurance companies' ratings are based solely on their ability to manage and absorb mortgage credit risk losses in a stress scenario and cited the effectiveness of state insurance regulation. Several other commenters, including another mortgage insurer, urged OFHEO to maintain the distinction.

b. OFHEO's Response

OFHEO believes that NRSROs take into account all of the relevant risk characteristics when assigning ratings, including those cited by the commenters, and seek to maintain comparability of the ratings as risk indicators across industries. Therefore, in the absence of quantitative data demonstrating a better credit performance of mortgage insurance companies versus similarly rated

[148] NRP2 provided that in the event OFHEO finds that the foreign currency risk on any liability or derivative instrument has not been transferred fully to a third party, the stress test would model the instrument by creating significant losses in both the up-rate and down-rate scenarios. In the up-rate scenario, the stress test would apply an exchange rate that increases the value of the foreign currency against the dollar by the same percentage that interest rates increase. In the down-rate scenario, the stress test would decrease the exchange rate of the dollar proportionately with the decline in the 10-year CMT, creating a decrease in the value of the dollar similar to that in the up-rate scenario.

[149] A foreign currency swap is ''in the money'' when net funds are due to the Enterprise under the contract and ''out of the money'' when the Enterprise owes net funds under the contract.

[150] 64 FR 18158 n. 168, April 13, 2000.

entities and securities, OFHEO has not given preferential treatment to mortgage insurers in the final rule. The final rule also maintains the distinction between triple-A- and double-A-rated counterparties and securities because performance differences between the two are reflected in the data irrespective of the level of stress.

6. Rating Agencies

In NPR2 OFHEO proposed to use rating information from four NRSROs, S&P, Moody's, D&P, and Fitch ICBA, for all counterparties and securities other than seller/servicers. For seller/servicers, NPR2 proposed to use only rating information from S&P and Moody's for seller/servicers providing mortgage credit enhancements. Freddie Mac and Fitch ICBA recommended that the rule use credit ratings by all NRSROs for all counterparties, and OFHEO has adopted this approach in the final rule.

7. Collateralized Securities

Both Fannie Mae and Freddie Mac commented that the stress test should not haircut investments if (1) they are backed by collateral representing obligations of the U.S. Government (e.g., Ginnie Mae securities or FHA-insured loans) or of GSEs; and (2) the collateral is held by a trustee. Fannie Mae also suggested that haircuts for mortgage revenue bonds based on security ratings would be excessive, due to double counting the risk of any collateral guaranteed by the Enterprise.

The final rule continues to treat these investments consistently with other investments because OFHEO believes that NRSROs strive to achieve consistency in the risk assessments represented by their ratings. A rating reflects the rater's overall assessment of the likelihood an investor will receive all contractually required principal and interest. A rating of less than triple-A reflects the rater's perception of an element of risk in some aspect of a security or its structure, such as the legal structure or the role of a third party in the transaction, even when some or all of the collateral represents obligations of the Federal Government or a Government-sponsored Enterprise. Further, OFHEO does not believe the haircutting of MRBs results in material double counting of the credit risk of any Enterprise collateral. Rating agencies treat such collateral as triple-A, so the risk associated with any lower rating on the collateralized security reflects risk factors not related to the collateral.

8. Private Label Security Haircut

NPR2 proposed to apply haircuts to payments due to an Enterprise from private label securities (municipal, corporate and mortgage- or asset-backed) based on the security's credit rating, consistent with the treatment of all securities and counterparties other than interest rate and foreign currency derivative contract counterparties. Thus, the proposal would have subjected unrated securities to a haircut appropriate to a rating of double-B or below. In the final rule, private label securities, like all other securities, will be assigned a 100 percent haircut if they are rated double-B or lower or are unrated.

OFHEO did not adopt Freddie Mac's suggestion that unrated securities should receive haircuts based on the rating of the issuer, because there are circumstances in which the credit rating for an issuer might not be appropriate for an unrated security. For example, for many securities there is no contractual requirement for an issuer to provide credit support. Furthermore, evaluating contractual obligations of individual issuers for specific securities would add complexity to the stress test that would impede its operational workability and would not be justified by any marginal benefit derived.

K. Mortgage Credit Enhancements

NPR2 proposed to offset stress test losses with the credit enhancements used by the Enterprises.[151] NPR2 generally distinguished between ''percent denominated'' enhancements (e.g., primary mortgage insurance), where the coverage is based on a percentage of the loss incurred, and ''dollar denominated'' enhancements (e.g., pool insurance) where the coverage available is expressed as a specified dollar amount, which is applied to offset credit losses on a pool of loans until the coverage is exhausted.[152] For all credit enhancements, the available coverage was reduced by a ''haircut'' based on the counterparty's public rating.[153] (*See* III.J., Other Credit Factors.)

NPR2 proposed to apply credit enhancements at the loan group level.[154] Because pools of loans covered by a particular credit enhancement contract could be distributed among more than one loan group, NPR2 proposed simplifications in the treatment of such contracts. Specifically, for dollar-denominated credit enhancements, NPR2 proposed allocating amounts available under the contract to each affected loan group based on the ratio of the aggregate balance of loans in the loan group covered by the enhancement, to the aggregate balance of all loans covered under the contract. As proposed in NPR2, for each loan group, the proposed stress test aggregated funds available under all dollar-denominated credit enhancements subject to the same credit rating, applied the amounts available to loan group losses each month of the stress period, and tracked the balances of the funds allocated to each loan group throughout the stress period.

When loans are covered by more than one type of credit enhancement, the stress test proposed in NPR2 would apply percent-denominated credit enhancements first and then apply dollar-denominated enhancements to cover any remaining losses. In such cases, to determine ''haircuts'' for counterparty credit risk, the proposed stress test assigned the credit rating associated with the first level of credit enhancement for a given loan (usually primary mortgage insurance) to all secondary credit enhancements,[155]

[151] The Charter Acts prohibit the purchase of conventional single family mortgages with LTV ratios in excess of 80 percent unless: (1) The seller retains a participation interest of 10 percent or more; (2) the seller agrees to repurchase or replace the mortgage upon default; or (3) the amount of the mortgage in excess of 80 percent is insured or guaranteed. For reasons stated in NPR2, the proposed stress test did not, and the final stress test will not, recognize any credit enhancements on any such mortgages that do not meet one of these three conditions. When this statutory requirement is applicable and is met, the stress test will recognize all credit enhancements related to the loan. *See* 64 FR 18156, April 13, 1999.

[152] Percent-denominated credit enhancements included mortgage insurance and unlimited recourse and unlimited indemnification. Mortgage insurance coverage is a percentage of the gross claim amount and unlimited recourse and unlimited indemnification cover 100 percent of the net loss amount. All other types of credit enhancements currently used by the Enterprises were considered dollar-denominated. The final rule distinguishes between loan limit credit enhancements and aggregate limit credit enhancements, which correspond to the NPR2 designations of percent- and dollar-limit credit enhancements, respectively, except that in the final rule, for computational convenience, unlimited recourse and unlimited indemnification are treated as aggregate limit credit enhancements (limited to the aggregate original UPB of the covered loans).

[153] A ''haircut'' is a reduction in the credit enhancement coverage available that is based on the public rating of the provider to reflect the risk that the stress of the stress period will cause the provider to default on some of its obligations. *See* section III.J., Other Credit Factors for a discussion of haircuts.

[154] Loan groups are created by grouping loans of the same type, origination year, original LTV, original coupon, Census Division, and remittance cycle. (*See* section 3.1, Data, of the Regulation Appendix.)

[155] For example, if 50 percent of a loan group carried primary mortgage insurance with an AAA-rated carrier, haircuts associated with an AAA

Continued

which might differ from the haircut appropriate for the contract credit enhancement counterparty.

OFHEO believed this approach to modeling mortgage credit enhancements struck a balance between precision and practical implementation. OFHEO recognized that the approach could understate the benefits of some and overstate those of other credit enhancement contracts, but believed that the overall impact on stress test results would likely be minimal.

A common theme of the comments on the treatment of mortgage credit enhancements proposed by NPR2 was that mortgage credit enhancements should be modeled at a greater level of detail. Commenters expressed concerns about the impact of modeling simplifications, the failure to model revenue inflows into spread accounts, and the modeling of termination of credit enhancement coverage. In addition, several commenters made suggestions about how OFHEO should treat credit derivatives, including the Mortgage Default Recourse Note (MODERN) transaction that was introduced recently by Freddie Mac. NPR2 did not specify a treatment for credit derivatives, because, with the exception of the MODERN transaction, the Enterprises had not been using them. The cash flows from the MODERN transaction could be modeled like other instruments that are modeled according to their terms and did not present any unique issues. Comments on these issues are discussed below by topic.

1. Modeling Simplifications

a. Contract Detail

(i) Comments

Both Enterprises criticized the simplified treatment of dollar-denominated credit enhancements. Fannie Mae argued that the ''underlying parameters'' of contractual agreements between an Enterprise and the credit enhancement counterparty should be modeled, because in some cases the approach taken in NPR2 would not be consistent with economic risk. Fannie Mae supported the modeling of all credit enhancement contracts according to their terms. For example, in the case of a contractual agreement that provides for the statutory minimum level of primary mortgage insurance on a particular lender's loans with LTVs in excess of 80 percent and a supplemental dollar-denominated coverage in the form of a pool policy that applies to the entire pool, Fannie Mae suggested that the stress test should apply the primary coverage only to that lender's loans with LTVs greater than 80 percent and that the supplemental coverage should be applied in accordance with the terms of the contract.

Freddie Mac commented that OFHEO's simplified treatment of dollar-denominated credit enhancements would provide the Enterprises with the benefit of some coverage to which they would not be entitled, and would fail to provide the benefits of some overlapping coverage to which they would be entitled. Freddie Mac also criticized the simplified structure because it did not accommodate credit enhancement contracts with specialized features. Freddie Mac argued that the complexity necessary to model the contractual terms of credit enhancements explicitly is justified by the need to assess accurately the value of the mortgage credit enhancements because more than 30 percent of its portfolio is credit enhanced beyond primary mortgage insurance.

(ii) OFHEO's Response

In response to Enterprise comments, OFHEO explored a method of modeling dollar-denominated credit enhancements that tracks amounts available under such credit enhancements by contract, rather than by loan group, charging payments to an Enterprise made under any such enhancement against the related contract, regardless of which loan groups are involved. This approach required the creation of a finer aggregation of loans below the loan group level, called Distinct Credit Enhancement Combinations (DCCs). DCCs identify the principal amount of loans in a loan group that have equivalently identical credit enhancement arrangements. The creation of DCCs permits the aggregation across all affected loan groups of deposits into and payments from each individual credit enhancement and the consideration of its specific rating and application priority. OFHEO found, however, that the implementation of this treatment is exceedingly complex and greatly increases the time required to run the stress test. OFHEO will continue to explore how this more precise modeling might be done more efficiently, but found it impracticable to incorporate the method in the stress test at this time.

The final rule adopts a more limited use of DCCs. While it ensures that haircut levels for aggregate limit credit enhancements are consistent with specific counterparty ratings and application priority, it does not track deposits to and withdrawals from such enhancements at the contract level. Rather, the Enterprises report credit enhancement available balances adjusted for deposits that can reasonably be expected to be made during the stress period. These adjusted balances are prorated among DCCs, based on the ratio of covered loan UPB at the DCC level to the total UPB of loans covered under the credit enhancement contract. For each DCC, the stress test then separately tracks withdrawals from such prorated enhancement amounts under a given contract to offset covered losses.

With regard to Fannie Mae's concern over the treatment of primary mortgage insurance combined with pool insurance, the use of DCCs in the final rule ensures that mortgage insurance coverage is applied only to covered loans and that pool insurance or other aggregate limit credit enhancement is then applied to all loans covered by the contract.

b. Ratings Detail

A number of commenters pointed out that the assignment of the ratings of providers of primary credit enhancements to all supplemental enhancements almost always overestimates the total credit enhancement coverage where the primary layer is triple-A-rated mortgage insurance, and may understate credit enhancement coverage where the primary layer is an unrated seller/servicer. They asserted that this effect creates an incentive to provide a thin primary triple-A layer of credit enhancement, supplemented by an extensive and lower cost credit enhancement from a lower rated institution.

In NPR2, OFHEO recognized that the application of the ratings of the providers of primary credit enhancement to secondary credit enhancements could understate or overstate the creditworthiness of secondary credit enhancements, but thought the impact of this simplification would likely be small. Nevertheless, in considering the comments, OFHEO weighed the additional complexity that would result from taking into account the actual rating of the supplemental provider against the disadvantages and perverse incentives that the commenters pointed out and concluded that the proposed stress test should be modified. Accordingly, the final regulation takes into account the rating of the supplemental credit enhancement rather than assigning the credit rating of the primary credit enhancement provider.

rating would be applied to any subordinate credit enhancement coverage on those loans.

c. Cash Accounts

In NPR2, OFHEO proposed to model mortgage credit enhancements that take the form of cash accounts by aggregating them with all other dollar-denominated credit enhancements, netting applicable haircuts, and offsetting losses dollar for dollar until the amount of coverage is exhausted.

The final rule models cash accounts more explicitly. It does not aggregate them with all other dollar-denominated credit enhancements and does not apply haircuts. However, if the cash is permitted to be invested in securities with maturities longer than one year, the value of the account is discounted by 30 percent to reflect the risk that the value of the investments may be lower than par when they are required to be liquidated to offset losses. When these investments are sold prior to maturity, there is a risk that the price may be significantly less than par because of changes in interest rates or market conditions that occur between the time the investments are marked to market and the time they are liquidated. This treatment is consistent with the practice of rating agencies of requiring overcollateralization or applying a discount factor to achieve sufficient certainty that the market price at least equals the required amount of credit enhancement at any time.

2. Credit Enhancements Receiving a Cash Flow Stream

Some dollar-denominated credit enhancements—primarily spread accounts—are funded by a portion of each loan interest payment. The proposed stress test took into account the amount of cash in the credit enhancement account at the start of the stress test, but did not attempt to model cash flows into the account during the stress period. The Enterprises and others criticized this feature of the stress test.

In response to these comments, the final regulation allows the Enterprises to take account of these cash inflows by adjusting the available balance at the start of the stress test to reflect inflows that might reasonably be expected to occur during the stress period. These adjusted initial balances are then used to offset covered losses during the stress period.

3. Termination Dates

Freddie Mac noted that, although OFHEO stated in NPR2 that the coverage expiration date for credit enhancement contracts is required as an input, OFHEO's cash flow model did not actually take it into account.

This apparent inconsistency resulted from OFHEO's efforts to respond to the enactment of the Homeowner's Protection Act of 1998 (HPA) [156] shortly before NPR2 was published. The HPA, which applies to loans originated after July 1, 1999, provides for the automatic termination of mortgage insurance when the loan balance is scheduled to reach 78 percent of the original value of the property securing the loan,[157] if payments on the loan are current. However, the adjustment of the stress test to reflect this change was not yet accomplished when NPR2 was published on April 13, 1999.

As a result of events that have transpired since 1998, OFHEO has decided to modify the stress test to terminate mortgage insurance on all loans that amortize below 78 percent LTV. The public discourse surrounding the enactment of the HPA and the notification policies of many lenders have raised consumer awareness of the option to cancel, making it increasingly likely that those borrowers will cancel mortgage insurance as soon as it is possible to do so. Accordingly, the final regulation specifies that mortgage insurance is terminated for all loans, whenever originated, when the loan is amortized below 78 percent LTV. For other types of credit enhancements, the stress test takes contract expiration dates into account.

4. Treatment of Credit Derivatives

Credit derivatives are contractual instruments that link payment or receipt of funds to the credit losses (which could include a rating change on a security or a default that affects payments) on an underlying asset or pool of assets. Treatments for credit derivatives were not specified in NPR2. Nor did NPR2 specify counterparty haircuts for credit derivatives.[158] Commenters, therefore, questioned whether the treatment of interest rate derivatives was intended to apply to credit derivatives. If not, these commenters asked precisely how credit derivatives would be modeled and, specifically, what haircuts are appropriate for counterparties to these transactions.

[156] Pub. L. 105–216, 112 Stat. 897–910 (1998) (12 U.S.C. 4901–4910).

[157] FHA loans and ''high risk'' loans, as defined by the Enterprises, are exempt from this provision.

[158] The proposed rule provided a detailed description of the cash flows that would be modeled for interest rate derivatives and described treatments for foreign currency swaps. NPR2 also specified a schedule of ''haircuts'' that would be applied to net amounts due to an Enterprise from counterparties in derivative transactions. 64 FR 18157–18159, 18292–18296, April 13, 1999.

A number of commenters addressed the general issue of how credit derivatives should be modeled. Also, several commenters addressed a type of instrument called a Mortgage Default Recourse Note (MODERN), which was used by Freddie Mac as part of a broader transaction to hedge mortgage credit risk. The MODERNs can be considered credit derivatives because the amounts of payments on them are ''derived'' from the performance of a fixed reference pool of mortgages, but do not flow through from the mortgages and are not secured by the mortgages. The two groups of comments, which raised different issues, are dealt with separately below.

a. Credit Derivatives in General

The use of credit derivatives to hedge credit risk of mortgages is a new practice at the Enterprises, which currently comprises an insignificant volume of transactions. However, OFHEO recognizes that, as happened with interest rate derivatives, this activity could grow significantly in the coming years. Therefore, the stress test must be sufficiently flexible to deal with these instruments appropriately as they arise. Credit derivatives are also far less standardized in type and form than interest rate derivatives. They can be structured to include only a small degree of counterparty risk to the Enterprises, like the MODERN transaction, or to create large exposure to counterparties. Depending upon their structures, these instruments can also create significant modeling complexities.

(i) Comments

The comments reflected two schools of thought on the general subject of credit derivatives. Commenters from the mortgage insurance industry recommended that these instruments be analyzed separately from other types of derivatives and as the subject of a separate rulemaking proceeding. They emphasized that the market for credit derivatives is still relatively small, that documentation is not standardized, and that counterparties do not come from a monoline industry dedicated to insuring mortgage credit losses. These commenters urged that OFHEO should use a cautious approach in assigning haircuts to counterparties in credit derivative transactions until the market for these instruments is better developed and subject to more specific regulations and protections. They also sought clarification that the discussion of the treatment of derivatives in NPR2 was intended to apply only to contracts that transfer interest rate risk.

The Enterprises and two investment banking firms expressed a different view. They view the market and documentation for any credit derivatives the Enterprises might use as well developed and similar to that for interest rate derivatives. Fannie Mae commented that collateralized credit-linked securities or risk transfers with well-capitalized firms with diversified books of business can reduce overall risk exposure, because derivative contract counterparties may be able to absorb losses better than mortgage insurers.

(ii) OFHEO's Response

OFHEO considered all of these comments. The credit derivatives market is relatively small at present, as reflected in the minimal volume of these instruments at the Enterprises. Accordingly, OFHEO has decided that it would be inappropriate at this time to issue a blanket treatment that would be applicable to all credit derivatives.

OFHEO agrees with the mortgage insurers that, at present, credit derivatives should be analyzed separately from other derivatives. However, OFHEO will not assume that all credit derivatives necessarily raise structural concerns or weaknesses that require haircuts that are more conservative than those applied to counterparties in similar transactions. Nor does OFHEO agree that it is necessary to have an additional rulemaking proceeding to deal with these instruments if and when they arise at the Enterprises. As discussed below, OFHEO's analysis of the MODERN transaction revealed that credit derivatives can be structured in such a way as to offset an Enterprise's credit risk in much the same manner as mortgage pool insurance, and it is consistent with the purpose of the stress test to account for that transaction in much the same manner as pool insurance. Likewise, if counterparty and other risks associated with the instrument appear to be the same as those of an interest rate or foreign currency derivative, it will be treated in a similar manner. However, if those risks are significantly different, OFHEO will impose some other appropriately conservative treatment.

b. MODERN Transaction

The MODERN transaction was a unique form of mortgage credit enhancement, developed by Freddie Mac, that involved the sale of securities to investors. The MODERN transaction may be thought of as a ''credit derivative'' because payment to investors in the securities, as well as payments to Freddie Mac, are determined from the credit performance of a fixed pool of mortgages, which serves as a reference asset. The transaction required creation of a trust that is contractually obligated to pay amounts to Freddie Mac based on the amount of credit losses on the reference pool. As consideration, Freddie Mac pays the trust a fee or premium that, together with earnings on the trust principal, is used to make interest payments to purchasers of the bonds that are used to fund the trust, as well as any payments due to Freddie Mac. These securities are issued in several tranches. The principal of each security is reduced (together with future interest payments), according to the priority of its tranche, as amounts are required to cover losses on the reference pool. The bonds, which are issued by a special purpose corporation and are not marketed as Enterprise securities, are all rated single-A and below because they carry a high probability that their entire principal will not be repaid. For Freddie Mac, the MODERN transaction bears some similarity to mortgage pool insurance, because Freddie Mac receives variable payments, based upon the credit losses in a pool of mortgages, and makes fixed payments, analogous to premiums.

(i) Comments

Comments were divided as to the appropriate treatment for the MODERN transaction. Commenters from the mortgage insurance industry took the position that it involves greater counterparty risk than interest rate derivatives or mortgage insurance. Accordingly, those commenters recommended giving no credit or subjecting payments to Freddie Mac under MODERNs to greater haircuts than those applicable to other types of counterparties, such as mortgage insurers. Freddie Mac said that there is no counterparty risk in these transactions, and that the payments to Freddie Mac cannot be reduced from the amounts required under the contract due to financial failure of a counterparty. There is no more risk of nonpayment in the MODERN transaction, argued Freddie Mac, than in a mortgage-backed security or other asset-backed security where a trustee is obligated to make payments when, and in the amounts that are, due.

(ii) OFHEO's Response

After study of the MODERN transaction, OFHEO agrees that it does create some credit risk (i.e., risk of default by a counterparty) to the Enterprises. Although risk of loss may be low because the transaction is structured to provide significant collateral, OFHEO does not have the data necessary to analyze the adequacy of that collateral. OFHEO finds the transaction most similar, structurally, to mortgage pool insurance and will model it in a similar fashion, applying the haircut that would be appropriate to a mortgage pool insurance contract. However, future MODERN or other credit derivative transactions will be analyzed based upon their specific terms and similar treatments will not necessarily be found appropriate for them.

The final rule does not detail the specific treatment for the MODERN transaction because it presents no new features that cannot be modeled using the more general treatments that are specified. Like other transactions that are modeled according to their terms, cash flows on the MODERN transaction will be projected according to the terms of its instruments and will be haircut based upon the credit rating of the counterparty. Those terms are tied directly to credit losses of a pool of Enterprise mortgage loans, which is modeled like any other pool of loans in the stress test.

L. New Debt and Investments

The proposed stress test projected cash inflows and outflows for each month of the stress period in order to determine the net availability of cash. To the extent cash inflows exceed cash outflows in any month, NPR2 specified how an Enterprise would employ the excess funds. Conversely, to the extent that cash outflows exceed cash inflows in any month, NPR2 specified how an Enterprise would obtain the funds to cover the cash deficit. The net cash position for each of the 120 months of the stress period was calculated at the end of each month. Depending upon whether the cash balance at the end of a month was positive or negative, new debt or investment was added. Excess cash was invested in one month maturity assets at a rate equivalent to the six-month Treasury yield. If a cash deficit existed, new short-term debt was added. NPR2 specified that the Enterprises would issue all new debt as six-month discount notes at the six-month Federal Agency Cost of Funds rate plus 2.5 basis points to cover issuance cost.

Comments are discussed below by topic.

1. Length of Debt Term

a. Comments

The proposal to fund all cash deficits with short-term instruments received a number of comments, only one of which favored the proposal. Most commenters that addressed the issue recommended that OFHEO provide for a mix of long- and short-term debt instruments, to better reflect the rebalancing strategies of the Enterprises. The Enterprises both suggested that the rule be modified to add 80 percent long-term debt in the up-rate scenario and 20 percent long-term debt in the down-rate scenario. One commenter suggested that OFHEO allow the Enterprises to use their internal models to project the appropriate mix of debt, apparently presuming that OFHEO would adopt an internal models approach to setting risk-based capital.

b. OFHEO's Response

After consideration of the comments and further analysis of the issue, OFHEO determined that a more risk-neutral approach to establishing the mix of long- and short-term debt is available and practical and has implemented it in the final rule. That approach sets a 50–50 target mix of long- and short-term debt for an Enterprise's portfolio and projects issuance of debt each month that will move the Enterprise toward that target and maintain that mix once it is reached. The 50–50 mix was selected because an Enterprise cannot know from month to month whether interest rates will go up or down and OFHEO will not try to model Enterprise predictions.

Notwithstanding the contrary views of some commenters, OFHEO has found it neither practical nor desirable to attempt in the stress test to predict the reactions of Enterprise management to interest rate shocks. Both Enterprises adjust the mix of maturities in their debt portfolios frequently, based upon the anticipated duration of their assets. The Enterprises have different policies designed to mitigate interest rate risk by matching the durations of assets and liabilities. They use sophisticated computer models to provide insights into future interest rate patterns and to monitor duration mismatches in their portfolios. These models allow the Enterprises to adjust their issuance of liabilities and their derivatives positions daily to comply with their internal policies. However, as several commenters recognized, attempting to approximate this decision-making process in the stress test is impractical. Further, doing so would cause the stress test to create additional hedges and risks in the Enterprises' books of business, which, in OFHEO's view, is contrary to the intent of the 1992 Act. For those reasons, OFHEO has adopted an approach that is not biased toward long- or short-term debt in either interest rate scenario.

The practical difficulties associated with attempting to develop a simple rule that approximates the Enterprises' likely new debt issuance is illustrated by an analysis of the refunding rules suggested in their comments. The Enterprises suggest that new debt issuances be weighted heavily to the long-term in the up-rate scenario and to the short-term in the down-rate scenario. They contend that, given the impracticality of predicting funding decisions, this simple methodology would provide a reasonable approximation of their behavior. OFHEO disagrees that this methodology provides such a reasonable approximation. The suggested weightings may or may not reflect the way the Enterprises respond to a future interest rate shock, because they rebalance to achieve certain balances in their portfolios, not in their issuances. Accordingly, whether they issue long- or short-term debt depends as much upon their current debt, asset, and derivative positions as upon interest rate movements.

Another factor in each Enterprise's funding decisions is its expectations for interest rates. These expectations are based, at least in part, upon historical models that, particularly under the extreme conditions of the stress test, might project various outcomes, and would, almost certainly, not project exactly the paths specified in the stress test. In short, the Enterprises would have no way of knowing that interest rates were going to continue moving quickly in the same direction for a year and remain at an elevated or deflated level for another nine years. However, despite this uncertainty, the Enterprises' approach would add mostly long-term debt in the up-rate scenario, increasing vulnerability to interest rate declines without regard to the mix of liabilities in the existing portfolio. This approach would have the effect of locking in relatively lower interest rates early in the stress period and lowering debt costs (and, therefore, capital requirements) significantly. Similarly, adding mostly short-term debt in the down-rate scenario would allow an Enterprise to refinance with lower cost debt regardless of the Enterprise's existing maturity mix, although, as many commenters noted, an assumption that an Enterprise will utilize predominately short-term funding is not realistic. It should be noted, however, that OFHEO found the impact on capital of short-term funding in the down-rate scenario was small, because rapid prepayment of loans creates little need for new debt.

In sum, OFHEO adopted an approach that did not attempt explicitly to predict or simulate Enterprise responses to the interest rate shocks in the stress test. Instead, recognizing that any new debt will have some effect on interest rate risk, OFHEO chose an approach that reflects no bias toward long- or short-term debt in either interest rate scenario.

2. Specific New Debt and Investment Instruments

a. Investment Instruments

Fannie Mae suggested that specifying an investment instrument with a one-month maturity and a six-month rate is inappropriate, because such instruments do not exist.

The final rule adopts the proposed rule and specifies that all cash surpluses will be invested in one-month maturity assets with a six-month Treasury yield. Recognizing that the instrument specified does not exist in the marketplace, OFHEO chose it as a modeling simplification that simulates the effect of a series of investments made over successive months and ensures that each month there are instruments that mature and are replaced in the portfolio. Using a longer maturity would have resulted in greater fluctuations in cash surpluses from month to month, causing the Enterprises to borrow money in later months to cover instruments purchased with a temporary cash surplus.

However, using a one-month rate for new investments would ignore the fact that an Enterprise's actual return on new short-term investments is based upon a number of different maturities between one day and one year. The six-month rate was chosen as a reasonable approximation of the average rate earned on those maturities.

b. Debt Instruments

Fannie Mae recommended that OFHEO change the proposed short-term debt instrument from a six-month to a one-month maturity, but did not explain any benefits from such a change. Nevertheless, OFHEO analyzed whether, in light of other changes in the new debt approach, the short-term debt instrument should be changed. OFHEO determined not to change the instrument proposed in NPR2, because a six-month rate is more representative of the mix of short-term maturities issued by the Enterprises.

A few commenters recommended that the regulation specify ten-year bullet (no call) debt as the long-term debt instrument. Fannie Mae suggested that OFHEO specify ten-year bullet debt as the long-term instrument during the up-rate scenario and, in the down-rate scenario, three-year debt callable in one year. OFHEO considered those options, but determined that a five-year bond callable in one year was most appropriate. The Enterprises issue a variety of debt with maturities greater than one year, but with average maturities generally far less than ten years. Also, they increasingly have come to rely upon callable debt to balance the prepayment optionality in their loan portfolios. For these reasons, OFHEO concluded that five-year callable debt was a more representative proxy for long-term Enterprise debt than ten-year bullet or three-year callable debt.

The Enterprises expressed concern that the regulation would not take into consideration the linkage of the-short term debt in their portfolios to interest rate swaps that result in effective long-term rates and maturities. The Enterprises create this long-term ''synthetic debt'' to take advantage of pricing anomalies in the debt and derivatives markets. The final rule clarifies that in determining the amount of short-term debt on the books of an Enterprise, the notional value of debt-linked fixed-pay swaps is deducted from the total amount of short-term debt and added to the total amount of long-term debt. This procedure effectively converts the affected short-term debt to long-term for purposes of the determining the mix of new debt.

3. Date of Issuance or Purchase

NPR2 specified that new debt is issued and new investments purchased at the end of each month of the stress period based upon the cash position at the end of the month. OFHEO determined that a more correct modeling convention is to issue the debt or purchase the investments at the midpoint of the month to reflect the fact that financial instruments mature throughout a month, not at month end. The final rule changes the issuance date to the 15th day of the month.

M. Cash Flows

1. Mortgage-Related Cash Flows

In NPR2, OFHEO described how the stress test would treat cash flows from mortgage-related instruments during the stress period. Under the proposal, the stress test would produce cash flows for single family and multifamily mortgage loans that are held in portfolio and cash flows for the same types of loans that are pooled into mortgage-backed securities (MBS) that are guaranteed by the Enterprise. For retained loans, the cash flows to the Enterprises are all the principal and interest payments on the loans, except for a portion of the interest payment retained by the servicer as compensation. For sold loans, these cash flows are guarantee fees received by the Enterprises and float income.[159] Cash flows, net of credit losses, are produced for each month of the stress period for each loan group using loan group characteristics and information on interest rates; default, prepayment, and loss severity rates; and third party credit enhancements.

Only Freddie Mac commented on the mortgage cash flow section of the stress test. Specifically, Freddie Mac recommended that OFHEO specify a different treatment for cash flows produced by adjustable rate mortgages (ARMs) and modify the remittance cycle for MBS. These comments and OFHEO's responses are discussed below.

a. Adjustable Rate Mortgages (ARMs)

In NPR2, OFHEO proposed to model ARM cash flows as if the loans all adjusted annually and as if they all had the same margins and caps. Under the proposal, all ARM loan groups were indexed to either the one- or three-year CMT or the 11th District COFI.

Freddie Mac alleged that the proposed approach failed to capture the impact of a substantial volume of ARM products that adjust monthly or every six months and have different margins and caps. These additional terms may result in extra income to the Enterprises.

Based on its analysis of ARM-related cash flows in light of Freddie Mac's comment, OFHEO has determined that it is appropriate to modify the stress test to model ARM cash flows according to their contract terms as reported in the RBC Report. This change reflects the importance of the full range of ARM products to the Enterprises, particularly in relatively volatile interest rate environments. Although the estimated default and prepayment rates for ARMs are averages for all ARM product types, for reasons described in III.I.1.h., Adjustable Rate Mortgages (ARMs), the stress test does capture the cash flow differences by ARM product type, thereby addressing Freddie Mac's comment. The respecified ARM model is capable of modeling cash flows from all ARM products whose terms are reported in the RBC Report according to those terms. This reflects the importance of these product types to the Enterprises, particularly in relatively volatile interest rate environments.

b. Remittance Cycles for Mortgage-Backed Securities (MBS)

In NPR2, OFHEO proposed to model only specific categories of MBS by including the float amount for three remittance cycles. Specifically, the stress test included remittance cycles only for Freddie Mac's Standard and Gold Programs and Fannie Mae's Standard Program. The stress test did not model additional programs.

Freddie Mac commented that under NPR2, only two of its three principal remittance cycles are modeled. Freddie Mac stated its general belief that where practicable, OFHEO should model the contractual terms or actual characteristics of an instrument or make reasonable simplifications.

Based on its analysis of MBS-related cash flows and in light of Freddie Mac's comment, OFHEO has determined that it is appropriate to modify the stress test to accommodate a wider range of remittance cycles, rather than limit the modeling to three specific cycles. Specifically, the final rule allows as an input, the number of float days in a remittance cycle, rather than a specified number of remittance cycles. The additional precision resulting from more refined modeling of MBS reflects the significant volume of these products and their importance to the Enterprises.

2. Nonmortgage Instrument Cash Flows

In NPR2, OFHEO specified the proposed treatment of cash flows from nonmortgage instruments during the stress period in two sections of the Regulation Appendix. Section 3.9.3, Debt and Related Cash Flows detailed how the stress test would produce cash flows for instruments such as debt, guaranteed investment contracts (GICs), preferred stock, debt-linked derivative contracts, and mortgage-linked derivative contracts. Similarly, section 3.9.4, Non-Mortgage Investment and Investment-Linked Derivative Contract Cash Flows detailed how the stress test would produce cash flows for instruments such as nonmortgage assets and investment-linked derivative contracts. The cash flows for debt, nonmortgage investments, and preferred stock included interest (or dividends for preferred stock) and principal payments or receipts. The cash flows for debt-linked, investment-linked, and mortgage-linked derivative contracts

[159] Float income is the earnings from the investment of principal and interest payments on sold loans during the remittance cycle for the period of time between the receipt of these payments from the servicer and the remittance of those payments, net of guarantee fees, to security holders. The length of time an Enterprise can invest these payments depends on the length of that period.

would include interest payments and receipts. NPR2 did not attempt to provide detailed descriptions of the cash flow calculations of all nonmortgage instruments that exist or might exist at the Enterprises. The examples that were provided were illustrative.

a. Comments

Only MICA commented on NPR2's proposed treatment of nonmortgage instrument cash flows. Although MICA generally agreed with the proposed method of generating cash flows, it recommended that American-style calls also be modeled. With American-style calls, the exact timing of the exercise of the call option is not always known because the nature of the American-style call allows the issuer to exercise its call at any time between the first call date and the final call date.

b. OFHEO's Response

American-style calls were modeled in NPR2, but, as a simplifying assumption, were treated as Bermudan-style calls, which are evaluated for exercise on each coupon payment date following the start date of the option. OFHEO agrees that it would be desirable to model American calls more precisely and is exploring how they might be precisely, but efficiently, modeled or whether a more appropriate simplifying assumption should be used. For now, the final rule continues to treat American-style calls as Bermudan-style calls.

In addition to the change made in response to the comments, OFHEO restructured the Appendix sections dealing with cash flows produced by nonmortgage instruments by combining the section of NPR2 dealing with debt with the section dealing with nonmortgage investment and investment-linked derivative contracts. OFHEO notes that this restructuring permits OFHEO to use a single modeling instruction for two types of instruments that have identical cash flows. That is, a fixed rate noncallable bond has the same cash flows whether it is modeled as a liability or an asset; the only difference is the party that receives the cash flow. The final rule also deletes instructions for specific types of instruments where more general provisions in the Appendix are sufficient to generate the necessary cash flows according to the terms of the instrument. In some cases, simplifying assumptions are made for certain instrument terms. These modifications serve to streamline the regulation.

While the final rule replaces specific modeling instructions with more general ones, the general instructions are more detailed in some respects than those proposed in NPR2. For example, the final rule specifies more detailed treatment of the options on nonmortgage instruments and cancellation rules on interest rate swaps.[160] Although NPR2 did not specifically mention call premiums and discounts, the final regulation specifies the manner in which the premiums and discounts for certain instruments are modeled. In addition, because the Enterprises use some interest-rate swaps to reduce the interest-rate risk associated with some callable debt they issue, OFHEO has decided to model put options associated with swaps so that those putable swaps are cancelled when the associated debt is called. Puts on Enterprise debt and calls on nonmortgage assets are still not modeled, given that would entail modeling the behavior of a third party that can exercise the option rather than the behavior of an Enterprise.

In the final rule, the more detailed general descriptions for noncomplex instruments are sufficient to provide an understanding of how each instrument is modeled. For some complex instruments, as with the description of the noncomplex instruments, industry standard methodology is used. In addition, the computer code that OFHEO plans to release after the rule is published will provide detail on the algorithms used.

N. Accounting, Taxes, and Operating Expenses

In NPR2, OFHEO proposed procedures for creating pro forma balance sheets and income statements, determining short-term debt issuance and short-term investments, calculating operating expenses and taxes, and computing capital distributions. The proposal explained the inputs and outputs for this component of the stress test. Inputs included an Enterprise's balance sheet at the beginning of the stress period, interest rates from the interest rates section, and information from the cash flow section. These inputs were used to produce as the output, the 120 monthly pro forma balance sheets and income statements for an Enterprise.

[160] An interest rate swap is an agreement whereby two parties (counterparties) agree to exchange periodic streams of interest payments on obligations they have issued. The dollar amount of the interest rate payments exchanged is based on a predetermined dollar principal (often the face amount of the underlying instrument), which is called the notional principal amount. The dollar amount each counterparty pays to the other is the agreed-upon periodic interest rate multiplied by the notional principal amount.

MBA, Fannie Mae and Freddie Mac commented on the proposed approaches related to taxes and accounting. Among the specific issues they raised were (1) the effective tax rate, (2) the adherence to generally accepted accounting principles (GAAP), (3) the treatment of non-interest earning assets, and (4) net operating losses. Several commenters, in addition to the Enterprises, commented on the proposed treatment of operating expenses. These comments and OFHEO's analysis of the comments are discussed below.

1. Effective Tax Rate

In NPR2, OFHEO proposed [161] to apply an effective Federal income tax rate of 30 percent when calculating the monthly provision for income taxes in the stress test. OFHEO noted that this tax rate is lower than the statutory rate set forth by the Internal Revenue Service. The Enterprises' lower overall tax rates are a result of tax exempt interest, tax deductions for dividends, and equity investments in affordable housing projects. OFHEO further noted that it may change the 30 percent income tax rate if the Enterprises' effective tax rate changes significantly over time or if the statutory income tax rate changes.

Fannie Mae was the only commenter to address the proposal to specify in the regulation a Federal effective income tax rate of 30 percent. Fannie Mae noted that this rate is lower than the current 35 percent corporate statutory rate because of the Enterprises' involvement in tax-advantaged activities, such as investing in tax-exempt mortgage revenue bonds and tax credits for affordable housing projects, but asserted that adopting a fixed tax rate would undermine the stress test's ability to relate the capital requirements dynamically to the evolving nature of the Enterprise's business. Accordingly, Fannie Mae recommended that the rule apply an effective tax rate based on recent experience, i.e., an effective tax rate equal to the average annual rate for each Enterprise over the most recent three calendar years.

OFHEO decided not to adopt Fannie Mae's recommendation. OFHEO has reserved in the regulation the discretion to change the 30 percent income tax rate if there are significant changes in Enterprise experience or changes in the statutory income tax rate. OFHEO believes that this addresses Fannie Mae's concern by allowing OFHEO the flexibility to make any reasonable adjustments to the rule, based on significant changes in circumstances.

[161] 64 FR 18297, April 13, 1999.

Fannie Mae's suggested approach would not have resulted in a significant increase in sensitivity to risk, but would have added unnecessary complexity to the stress test. Accordingly, OFHEO has adopted without modification the proposal in NPR2 with respect to the effective income tax rate.

2. Consistency With GAAP

In NPR2, OFHEO proposed to apply Generally Accepted Accounting Principles (GAAP) in the stress test to the extent that they are applicable and feasible.[162]

Only the Enterprises addressed the proposed accounting approach. Although Freddie Mac generally agreed that the stress test should apply GAAP to the extent possible, it mentioned several accounting treatments that it believed should be modified. Fannie Mae stated that the proposed regulation does not adhere to GAAP uniformly in describing the procedures to use to generate projected monthly financial statements. Accordingly, Fannie Mae recommended that OFHEO adopt a more generalized approach toward accounting methods that would establish basic guidelines for projecting stress test performance. Notwithstanding Fannie Mae's preference for a generalized approach, both Freddie Mac and it specifically requested that the stress test recognize Financial Accounting Standard (FAS) 115 [163] and FAS 133,[164] both of which require a portion of unrealized market value gains or losses on the balance sheet to be recorded in a new stockholder's equity account known as ''other comprehensive income'' (OCI).

OFHEO agrees with the Enterprises that, to the extent that GAAP is applicable, the risk-based capital regulation should adhere to GAAP. Accordingly, like the proposed rule, the final rule adopts accounting rules that are generally consistent with GAAP, although, in certain situations, complete adherence to GAAP is impractical given the stylized nature of the stress test. In those situations, such as with FAS 115 and FAS 133, the agency has determined that it is necessary to implement simplified procedures to allow the efficient and practical implementation of the stress test. For instance, it would be impracticable and unreasonably speculative to make mark-to-market adjustments over the ten-year stress test. Given the difficulties inherent in calculating future market values during the stress test, OFHEO has decided to recognize unrealized gains (losses) resulting from FAS 115 and FAS 133 and related OCI at the outset of the stress test. That is, the stress test does not reflect certain securities at their fair market values later in the stress test, as required by FAS 115 and FAS 133. Instead, these assets are adjusted to an amortized cost basis at the outset of the stress test. Similarly, gains and losses resulting from the termination of derivative instruments during the stress period are amortized on a straight-line basis over the same period used to calculate the gain or loss.

3. Treatment of Non-Interest Earning Assets

In NPR2, OFHEO proposed to convert to cash non-earning assets, such as miscellaneous receivables, real estate owned (REO), and general clearing accounts, by the end of the stress test's first year. NPR2 allowed other non-earning assets, such as investments in low income housing tax credits, to remain constant over the stress period, i.e., be carried over from quarter to quarter and earn no income.[165]

Three commenters stated that the treatment of non-interest earning assets in the stress test would penalize investments in affordable housing programs. Fannie Mae stated that investments in affordable housing should be converted to cash over the first six months of the stress period, thereby eliminating what it termed an ''artificial burden'' to this type of investment. Freddie Mac stated that these assets should be converted to cash when the Enterprises begin to show net losses to reflect the resulting elimination of associated tax benefits.

After reviewing the comments, OFHEO has decided to adopt the proposed rule with one modification. Investments in low income housing tax credits are converted to cash over the first six months of the stress period.

4. Net Operating Losses

In NPR2,[166] OFHEO proposed to have a Net Operating Loss (NOL) carryback period of three years so that an NOL for a current month would be ''carried back'' to offset taxes in any or all of the preceding three calendar years. OFHEO explained that this offset of the prior years' taxes results in a negative provision for income taxes for the current month. A period of 15 years was proposed for carry forwards.

MBA and Fannie Mae commented that the proposed three-year carry back period and 15-year carry forward periods for NOL tax offsets are no longer consistent with the current tax code. These commenters requested that these periods be changed to reflect the recent legislation which specifies periods of two and twenty years, respectively.

OFHEO has decided to modify the NOL carryback and carryforward periods to two and twenty years, respectively. This will allow the accounting procedures in the stress test to be consistent with the current tax code.

5. Operating Expenses

In NPR2, OFHEO proposed that the stress test calculate operating expenses, including those administrative expenses related to an Enterprise's salaries and benefits, professional services, property, equipment, and offices. Under the proposal, operating expenses would decline in direct proportion to the decline in the volume of each Enterprise's total mortgage portfolio (i.e., the sum of outstanding principal balances of its retained and sold mortgage portfolios). The stress test first projected how an Enterprise's mortgage portfolio would change during the stress period on a monthly basis. It then multiplied the percentage of assets remaining by one-third of the Enterprise's operating expenses in the quarter immediately preceding the start of the stress test to simulate the changed operating expenses in each month of the stress period. The resulting amount would be an Enterprise's operating expense for a given month in the stress period. OFHEO explained that the expense reduction pattern for the up-rate scenario would differ from the down-rate scenario, as would the pattern within each scenario, depending on changes in the characteristics of an Enterprise's total mortgage portfolio.

a. Comments

Commenters provided widely divergent views about the proposed treatment of operating expenses. Among the issues that they addressed were whether the proposed treatment would result in an appropriate capital requirement, whether the stress test should link operating expenses to the size of each Enterprise's mortgage portfolio, whether the stress test should model fixed and variable expenses separately, whether the stress test should exclude expenses associated with new activities, and whether

[162] Section 3.10.3.6 of the NPR2 Regulation Appendix, 64 FR 18298–18299, April 13, 1999.

[163] Financial Accounting Standards Board Statement of Financial Accounting Standard 115, *Accounting for Certain Investments in Debt and Equity Securities,* May 1993.

[164] Financial Accounting Standards Board Statement of Financial Accounting Standard 113, *Accounting for Derivative Instruments and Hedging Activities,* June 1998.

[165] 64 FR 18298, April 13, 1999.

[166] 64 FR 18297, April 13, 1999.

operating expenses should be tied to the previous quarter's operating expenses.

Commenters disagreed about the extent to which the proposed treatment of operating expenses would result in an appropriate capital requirement. The Enterprises and a Wall Street firm commented that the proposal would result in an excessive capital requirement. Freddie Mac stated that operating expenses constitute a relatively small portion of its total expenses but a disproportionately large component of its capital requirement under the proposal. In contrast, several trade associations and financial organizations stated that it would be more appropriate to model operating expenses in a manner that would result in a higher capital requirement. These differing views, which are discussed below, were reflected in specific recommendations for revising the stress test's modeling of operating expenses.

Commenters, for instance, disagreed about whether the stress test should link operating expenses to the change in the size of an Enterprise's mortgage portfolio during the stress test. The Enterprises stated that the stress test should not incorporate such a linkage, which they believe distorts risks. They were especially concerned that such a modeling approach would result in significantly different treatment for operating expenses depending on the interest rate scenario. Fannie Mae stated that the capital requirement in the up-rate scenario could be as much as $2 billion higher than the down-rate scenario. In contrast, other financial firms stated that operating expenses should remain constant rather than decline during the stress test. They noted that having operating expenses decline is inconsistent with the experience of a financial institution facing stressful conditions. They argued that such institutions typically experience an increase in operating expenses during stressful periods since more expenses are incurred to manage defaults and repossessed real estate.

Commenters also disagreed about whether fixed and variable expenses should be modeled together or separately. Both Enterprises stated that the stress test should model fixed and variable costs separately and then apply a fixed expense ratio against the projected mortgage portfolio balances. Under their recommended approach, the level of operating expenses would not vary based on the level of such expenses in the quarter preceding the stress test. Other commenters believed that the stress test should not separately model fixed and variable expenses, but rather should hold these expenses constant during the stress period.

Both Enterprises commented that the stress test should not consider expenses related to new business development, product innovation, and research, given the 1992 Act's "no new business" requirement.[167] Freddie Mac stated that under the no new business requirement, this portion of its operating expenses would drop nearly to zero during the stress period. Similarly, Fannie Mae stated that less than half of each company's current cost structure is devoted to maintenance and support of existing book-of-business balances.

b. OFHEO's Response

As the widely divergent comments indicated, there is no single "correct" way to model operating expenses, particularly in a stylized stress test which by necessity must incorporate simplifying specifications. In general, the Enterprises stated that the proposed treatment would result in unreasonably high capital requirements, whereas other financial institutions stated that the proposed treatment would result in unreasonably low capital requirements. OFHEO believes that the recommendation by both Enterprises to have a fixed expense ratio of between 1.5 and 2.0 basis points of unpaid principal balance (UPB) per year is unreasonably low. As one commenter noted, Enterprise expenses to outstanding MBS and portfolio balances have averaged over 7.0 basis points for the past ten years. Similarly, although there was intuitive appeal to the recommendation by financial institutions to hold the level of expenses constant throughout the stress period given the experience of financial institutions under stress, adopting such an approach here would have resulted in unreasonably high capital requirements relative to operating expenses.

After considering all of the comments, OFHEO has decided to adopt the NPR2 approach to operating expense, with some modification. In the final rule, the baseline operating expense level is the same as in NPR2, and operating expenses continue to decrease as the mortgage portfolios decrease, but the method of determining the amount of the decrease is modified. Rather than a strictly proportional decrease, the amount of the decrease in each month of the stress period is determined by calculating a base amount comprised of a fixed component and a variable component. The fixed component is equal to one-third of the baseline level and remains fixed throughout the stress period. The variable component at the start of the stress test is equal to two-thirds of baseline and declines in direct proportion to the decline in the UPB of the combined retained and sold mortgage portfolios. This base amount is further reduced by one-third, except that this further reduction is phased in during the first 12 months of the stress test.

In determining its treatment of operating expenses, OFHEO was careful to balance the competing concerns expressed by the commenters. Financial institutions facing extremely stressful conditions generally do experience an increase in operating expenses, and therefore the proportional reduction in all expenses that was contained in NPR2 may understate the expenses that would be expected under the conditions of the stress test. Nevertheless, OFHEO believes that holding all operating expenses constant, as suggested by some commenters, would have overstated operating expenses and that some reduction is appropriate over time, given the cessation of all new business in the stress test.

On balance, OFHEO believes that the formula in the final rule provides an overall expense experience that is consistent with the stress period. The gradual phase-in during the first 12 months of the stress period of the adjustment to the base amount reflects the fact that operating expenses would not be likely to change dramatically in the first few months of the stress period. At any given time, the Enterprises have numerous commitments and obligations that affect operating expenses, including those related to personnel and technological innovation. Upon entering a stressful period, it would take some time for an Enterprise to implement modifications associated with these commitments and obligations. OFHEO has determined that it would be inappropriate to adopt the Enterprises' recommendations to exclude expenses related to new business development, product innovation, and research. As discussed in NPR2,[168] OFHEO determined that it would be inconsistent with the 1992 Act and the overall purpose of the stress test for the model to attempt to reflect decisions that would be made by an Enterprise that was intentionally winding down its operations. Nevertheless, the one-third reduction in expenses incorporated in the final rule reflects that the

[167] 12 U.S.C. 4611(a)(3)(A) states that "No other purchases of mortgages shall be assumed" under the current rule, except for contractual commitments.

[168] 64 FR 18168–69, April 13, 1999.

elimination of new business would result in some permanent reduction in operating expenses.

O. Dividends and Share Repurchases

The proposed stress test specifies in each quarter of the stress period whether the Enterprise pays preferred and common stock dividends, and, if so, how much. For preferred and common stock, dividends are paid as long as an Enterprise meets the minimum capital requirement before and after the payment of these dividends. For preferred stock, the payments are based on the coupon rates of the issues outstanding. For common stock, dividends are paid in the first year of the stress period. The payments are based on the trend in earnings. If earnings are increasing, the dividend payout rate is equal to the average of the percentage payout of the preceding four quarters. If earnings are not increasing, then the amount of dividends paid is based on the preceding quarter's dollar amount of dividends per share. If a full dividend would cause the Enterprise to fall below its estimated minimum capital level, then a partial dividend is paid. The proposed stress test did not recognize other capital distributions such as repurchases of common stock or redemptions of preferred stock.

Fannie Mae and Freddie Mac were the only commenters on the proposed treatment of dividends.

1. Preferred Stock

With regard to preferred stock, Freddie Mac agreed with the proposal, stating that it appropriately differentiates between preferred and common stock and appropriately captures distinctions in the effects of different preferred stock structures on the extent to which such equity capital is available to absorb losses. Fannie Mae disagreed with the proposed treatment of preferred stock dividends, stating that it would be inappropriate to assume that the Enterprises would continue to pay preferred dividends and deplete capital reserves throughout the stress period when they might be classified as ''undercapitalized.''[169] That Enterprise recommended that the stress test terminate all capital distributions at the end of the first year of the stress period.

The final rule adopts the NPR2 treatment of preferred dividends without change. After reviewing the comments on the payment of preferred stock dividends during the stress period, OFHEO has determined that it is appropriate for the stress test to distinguish between the two types of equity and allow the payment of preferred stock dividends in some circumstances in which common stock dividends are not paid. Such a distinction reflects the higher level of commitment that a corporation makes to investors when issuing preferred stock versus common stock, since preferred stockholders have a first claim on capital distributions.

2. Common Stock

With regard to common stock, both Enterprises agreed with the proposal to cease paying dividends after the first year of the stress test. They stated that such a treatment is appropriate and aligns dividends with the capital classifications and real economic incentives. Both Enterprises, however, offered recommendations to modify the proposed dividend rate for common stock. Freddie Mac recommended using a long-term industry average dividend rate specified in the regulation that would be approximately 25 percent of earnings rather than a rate based on dividend payments in recent quarters. That Enterprise believed that such an approach would simplify the regulation's operation by substituting a single fixed value for a process that would require collecting data on four prior quarters of dividend payments and earnings, calculating the payout ratio for each quarter, and averaging those ratios. Fannie Mae stated that it is inappropriate to rely on a one-year time frame in which payments could be overly volatile, especially if there were a one-time distribution. Fannie Mae recommended basing the payout rates on the most recent three-year period, claiming such a change would reduce unnecessary volatility in the capital requirement.

After analyzing the comments, OFHEO has determined that it is appropriate to adopt the payout rates as proposed in NPR2. OFHEO notes that between 1990 and 1999 Fannie Mae's dividend payout ratio ranged from a low of 16 percent in 1990 to a high of 35 percent in 1995; whereas, Freddie Mac's dividend payout ratio ranged from a low of 20 percent in 1994 to a high of 23 percent in 1990.

Given such wide ranges in dividend payouts by one of the Enterprises, it would be inappropriate to adopt Freddie Mac's recommendation to set by regulation a dividend payout ratio of 25 percent. OFHEO has also decided not to adopt Fannie Mae's recommendation to extend the time period used to determine the payout rate from one year to three years. While Fannie Mae is correct that its recommended approach would reduce volatility in the capital requirements, such an extended time period under the recommendation would make it more difficult for the stress test to identify quickly changing Enterprise dividend policy that might deplete an Enterprise's capital. Tripling the time period on which the dividend rate is based would be inconsistent with the need for the stress test to provide a timely early warning of potential capital deficiencies.

TABLE 7.—DIVIDEND PAYOUT RATIO FOR FANNIE MAE AND FREDDIE MAC

Fannie Mae	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990
Common Stock Dividend	1.08	0.96	0.84	0.76	0.68	0.60	0.46	0.34	0.26	0.18
Diluted EPS	3.72	3.23	2.83	2.48	1.95	1.94	1.71	1.48	1.25	1.12
Div. Payout Ratio	29%	30%	30%	31%	35%	31%	27%	23%	21%	16%
Freddie Mac	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990
Common Stock Dividend	0.60	0.48	0.40	0.35	0.30	0.26	0.22	0.19	0.17	0.13
Diluted EPS	2.96	2.31	1.88	1.63	1.42	1.27	1.02	0.82	0.77	0.57
Div. Payout Ratio	20%	21%	21%	21%	21%	20%	22%	23%	22%	23%

[169] Under the 1992 Act an Enterprise is undercapitalized if it does not meet its risk-based capital requirement but meets the minimum requirement, 12 U.S.C. 4614(a).

3. Share Repurchases

In the only comment that addressed other types of capital distributions, Freddie Mac recommended that the stress test count share repurchases as common stock dividends because an Enterprise could follow a strategy of making capital distributions either by dividends or share repurchases. It stated that without this modification, an Enterprise would have to hold more future capital if it made a capital distribution solely by way of dividend payments than if it made an identical distribution by way of share repurchases. Freddie Mac, while acknowledging that reducing dividends is more difficult than ceasing share repurchases, argued that such differential treatment is not warranted by small differences in risk presented by these two forms of capital distributions.

OFHEO has decided to include rules in the stress test addressing share repurchases during the stress period. OFHEO agrees that share repurchases are potentially significant capital distributions that should be reflected in the stress test. However, unlike common stock dividends that are paid for the first four quarters of the stress period, the stress test provides for share repurchases only during the first two quarters. OFHEO believes that this shorter period more closely reflects what would likely occur as the Enterprise begins to experience the adverse economic conditions of the stress test.

4. Oversight Responsibility

OFHEO emphasizes that there are significant differences between establishing a modeling decision for dividend payments and share repurchases in the risk-based capital regulation and acting on a dividend approval request from an Enterprise that is no longer adequately capitalized. Accordingly, provisions in the stress test that provide for the payment of dividends by an undercapitalized Enterprise in some circumstances and not others should not be interpreted as an indication of how OFHEO will act on any specific dividend approval request. Should the situation arise, OFHEO will evaluate any request for approval of a dividend payment on the basis of a case-by-case analysis of all the relevant facts and circumstances.

P. Capital Calculation

1. Background

In NPR2, OFHEO proposed procedures to calculate the amount of capital that an Enterprise would need just to maintain positive capital during the stress test. Under the proposal, once the stress test projects an Enterprise's capital at the end of every month in the ten-year stress period, the capital calculation process discounts the monthly capital balances back to the start date of the stress period. The Enterprise's starting capital is then adjusted by subtracting the lowest of the discounted capital balances to account for the smallest capital excess or largest deficit (i.e., subtracting a negative number in the case of a deficit). The factor used to discount a monthly capital balance is based on after-tax borrowing or investing yields as appropriate for that month and all previous months during the stress period. After the stress test ascertains the amount of capital necessary to maintain positive capital during the stress period it then multiplies the amount by an additional 30 percent to arrive at the risk-based capital requirement. The additional 30 percent is mandated by section 1361(c) of the 1992 Act to capture the management and operations risk of an Enterprise.

OFHEO stated in NPR2 that it was necessary to use a present-value approach to recognize that a dollar today is worth significantly more than a dollar ten years in the future, that is, a dollar of capital at the beginning of the stress period can be invested to return more in a later year. NPR2 employed selected discount rates that approximate an "iterative approach" also discussed in NPR2. An iterative approach would use a series of iterative simulations as it adjusted the Enterprise's balance sheet until it determined a starting level of capital necessary for an Enterprise just to maintain positive capital, but no more, throughout the stress period. Both approaches take into account the two different interest rate scenarios by applying different interest rates in the capital calculation for each scenario. Both approaches were designed to ensure that an Enterprise would have enough capital to survive the stress test regardless of when losses associated with management and operations risk might occur, even if that were the first day of the stress period. However, OFHEO proposed the present value approach because it is much simpler to design and replicate.

2. Comments

Fannie Mae and Freddie Mac were the only commenters to address the proposed method to calculate the risk-based capital requirement. Each Enterprise objected to the use of a present value approach. Instead, they each recommended that the stress test should base the amount of required risk-based capital solely on the maximum amount of total capital consumed during the stress period, i.e., subtracting the lowest stress-period capital level without discounting from the starting position total capital. Fannie Mae criticized the present value approach, claiming that it is contrary to the 1992 Act's "directive" to follow Generally Accepted Accounting Principles (GAAP), results in inappropriate incentives, and is contrary to standard industry practice. Freddie Mac stated that the present value approach distorts the assessment of capital and risk and raises timing issues, based on the assumption that management and operations risk is proportional to the interest rate risk and credit risk. That Enterprise stated that the proposed discounting method assumes that losses associated with management and operations risk occur at the very beginning of the stress test.

3. OFHEO's Response

The final regulation generally adopts the approach to calculating risk-based capital proposed in NPR2.[170] After reviewing the proposed method of calculating risk-based capital in light of the comments, OFHEO found the present value approach preferable to the approach suggested by the Enterprises. By discounting, the present value approach allows the capital calculation process to account for the time value of money. The time value of money is important because the stress period extends for ten years during which funds would be invested constantly and during which management and operations losses could occur at any time, including the beginning of the stress period.

OFHEO disagrees with each of the commenters' criticisms of its use of a present value approach. Specifically, OFHEO disagrees with the Enterprises' claim that basing the amount of capital required for the stress test on a capital consumption approach is more consistent with the statute or more appropriate from a risk management perspective than the discounting approach used by OFHEO. First, the approaches recommended by the Enterprises would not ensure that the Enterprises hold capital sufficient to survive the stress test if management and operations losses occurred at the beginning of the ten-year stress period; they would only provide such assurances if these losses occurred near

[170] As discussed in the Regulation Appendix, certain additional amounts relating to off-balance-sheet items addressed in section 3.9, Alternative Modeling Treatments, are included in the calculation of risk-based capital.

the end of that period. Second, OFHEO believes that a present value approach is appropriate because it requires an Enterprise to maintain a capital cushion for other risks when credit risk and interest rate risk are relatively low. Thus, an Enterprise is more likely to survive subsequent, more stressful periods. Third, OFHEO finds no merit to the claim that a present value approach is contrary to standard industry practices; clearly, present value theory is well established in finance and economics, both in academia and in industry. Fourth, in response to Freddie Mac's comment, the present value approach requires an Enterprise to have positive capital at any time during the ten-year stress period, even if a loss attributable to management and operations risk occurs at the beginning of the ten-year stress period.

IV. Regulatory Impact

A. Executive Order 12866—Economic Analysis

1. Introduction

This rule implements the statutory direction to OFHEO in the 1992 Act to set forth in a regulation a risk-based capital test that applies prescribed credit and interest rate stresses to the Enterprises' businesses. Recognizing the novelty of this type of regulation, OFHEO issued a series of notices soliciting public comment. First, the ANPR sought public comment on a number of issues relating to the development of the regulation. These comments were considered in the development of the two subsequent NPRs addressing different components of the risk-based capital regulation. NPR1 related to the methodology for identifying the benchmark loss experience and the use of OFHEO's House Price Index in the stress test. NPR2 set forth the remaining specifications of the stress test. In addition, OFHEO published a Notice soliciting reply comments to provide interested parties an opportunity to respond to other commenters. Throughout the preambles of the NPRs and in OFHEO's responses to comment on the NPRs, OFHEO has provided justification for all of the choices that have been made and has explained the effects of those choices in the rulemaking. All plausible models and assumptions that were suggested by commenters or otherwise identified by OFHEO have been discussed in the rulemaking documents.

This regulation has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866, Regulatory Planning and Review (E.O. 12866). OMB has determined that this is an economically significant rule. OFHEO has conducted an economic analysis of the final rule in accordance with the E.O. 12866 and has concluded that there is adequate information indicating the need for the risk-based capital regulation and that the potential benefits to the Enterprises, the housing market, homeowners, and taxpayers, far exceed any potential costs that may result from compliance with this rule.

In making this determination, OFHEO took into account that the rule relies on performance objectives to the maximum extent possible in helping to ensure the adequate capitalization of the Enterprises. In addition, the economic analysis reveals that the decisions contained in this rule were based upon the best reasonably obtainable technical, economic, and other information germane to the subject matter of the rule. OFHEO considered a reasonable number of alternatives for each of these decisions and chose the most cost-effective alternative that achieves the purposes of the 1992 Act. All plausible models and assumptions that were suggested by commenters or otherwise identified by OFHEO have been discussed in the rulemaking documents.

In conducting its analysis, OFHEO has been guided by the principles of fair disclosure and transparency. In addition, the rule is implemented in a manner that, to the extent possible, provides transparency of the capital calculation process used by OFHEO, which will benefit the Enterprises and other interested parties. OFHEO has solicited comments on all aspects of the rule through the ANPR and two NPRs described above. To assist commenters in evaluating the rule, OFHEO provided technical information on its website, in addition to the extensive material included with the notices.

2. Statement of Need for Proposed Action

The specificity of the statutory requirement to set forth a capital stress test in a regulation reflects a Congressional determination that there is a need for this regulation and that the benefits to be derived exceed any potential costs involved. The 1992 Act specifies key elements of that stress test, which is to be designed to identify the amount of capital that an Enterprise must hold at any given time in order to maintain positive capital for a ten-year period of economic stress. OFHEO concurs with the Congressional judgment that such a regulation is necessary in order to ensure that the Enterprises can continue to fulfill their important public purposes and to reduce the potential risk of the serious disruptions that could occur if one or both of the Enterprises experienced economic difficulties.

The Enterprises perform an important role in the nation's housing finance system. Issuances of debt and guaranteed mortgage-backed securities by the Enterprises have grown enormously in the past decade, providing more than half of the conventional financing of housing in the United States. The Enterprises are the largest sources of secondary mortgage market credit throughout the United States and fill a particularly important role in providing assistance in the areas of low- and moderate-income housing. Financial failure of an Enterprise could result not only in losses to investors in its securities, but also decreased public confidence in the securities of the other Enterprise and of the Federal Home Loan Banks, which are also Federal Government sponsored enterprises that provide a source of financing for housing. Such a failure also could cause decreased availability and increased cost of financing for persons seeking to purchase or refinance housing in the United States. For these reasons, public confidence in the financial health of the Enterprises will help to promote overall stability in the housing market, benefiting all homeowners and other participants in that market.

Although the current risk of an Enterprise failure is small, the continued financial stability of the Enterprises cannot be taken for granted. Over the past two decades, failures of financial institutions have been commonplace, including more than 2900 banks and thrifts and a number of securities firms. The risks associated with Fannie Mae and Freddie Mac differ in some important ways from those associated with banks, thrifts, and securities firms. However, Government sponsored enterprises are not immune to failure. Fannie Mae encountered serious financial difficulty in the early 1980s, recovering in large part because of a fortuitous decline in interest rates, and the Farm Credit System experienced serious problems later in the decade. Because of the Enterprises' key role and important public mission, Congress created OFHEO to ensure their safe and sound operation. The current combined debt and guarantee obligations of the Enterprises amount to nearly $2.5 trillion, and, unlike banks, thrifts, and securities firms, no Enterprise obligations are backed by an insurance fund that could contribute toward meeting creditor claims.

The risk-based capital rule (in conjunction with OFHEO's other regulatory tools) is intended to reduce the risk of financial failure of an Enterprise. The rule can contribute to that goal by requiring the Enterprises to hold more capital or take less risk than they otherwise would in some or most circumstances, particularly those circumstances in which the danger of failure is greatest. In circumstances in which some capital or risk adjustment is necessary, the rule gives an Enterprise the flexibility to choose whether more capital, less risk, or a combination of the two best suits its business needs.

Capital reduces the risk of insolvency by absorbing losses. For most firms, debt markets provide strong capital discipline, penalizing a firm that is excessively leveraged with higher borrowing costs. That discipline is largely lacking for the Enterprises because of their status as Government sponsored enterprises. This lack of normal market discipline is the type of significant ''market failure'' that is described in the Office of Management and Budget (OMB) ''best practices'' document (OMB Best Practices Guide).[171] It makes capital requirements particularly important for the Enterprises.

The statutory requirement to promulgate a risk-based capital regulation reflects a Congressional judgment that the market failure should be addressed through Government-mandated regulation. Enterprise debt securities receive favorable pricing in the market, due in part to the Enterprises' statutory Federal charters and advantages conferred thereby and the perception that the Federal Government would act to prevent an Enterprise's default. This perception, as well as the Enterprises' dominant position in the secondary market for conventional residential mortgage loans, lessens the market discipline that would apply if the Enterprises were not Government-sponsored enterprises. OFHEO views the Congressional direction to develop a risk-based capital regulation as intended, in part, to compensate for this lack of market discipline.

The market failure is significant, even though the Enterprises currently are well managed and profitable, because, if the Enterprises were to experience financial difficulties, disruptions could occur, with significant adverse effects on the housing and financial markets. Further, the market failure is significant because of the important public purposes served by the Enterprises and the need to avoid the expense to the taxpayer if intervention by the Federal Government were found to be necessary.

In summary, OFHEO is confident that the risk-based capital rule will perform effectively the role intended for it by the 1992 Act. It will promote the Enterprises' safety and soundness, thereby enhancing their ability to continue to carry out their public purposes.[172] These purposes include providing stability in the secondary market for residential mortgages and providing access to mortgage credit in central cities, rural areas, and underserved areas.

[171] *Economikc Analysis of Federal Regulations Under Executive Order 12866.* Office of Management and Budget (Undated document representing the result of two-year study to describe the ''best practices'' for preparing the economic analysis of a significant action called for by E.O. 12866).

[172] 1992 Act, section 1302(2) (12 U.S.C. 4501(2)).

3. Examination of Alternative Approaches

a. Limitations Imposed by Statute

In developing the regulation, the Director of OFHEO (Director) has discretion with respect to a number of issues related to the stress test. However, the specificity of the 1992 Act provisions related to the risk-based capital stress test defines a general level of stringency and limits the alternative approaches available to OFHEO. OFHEO is directed to: (1) Identify default and loss severity rates that satisfy a specific statutory standard for credit stress (which OFHEO has termed ''benchmark'' rates) and (2) apply a stress test that subjects each Enterprise to a ten-year stress period with mortgage loss rates that are reasonably related to these benchmark rates. Interest rate shocks during the ten-year stress period are statutorily defined as well. During the first year of the stress period the ten-year constant maturity Treasury rate (CMT) must rise or fall by specified amounts. In both scenarios (rising or falling rates), the rate must remain constant for the remaining nine years of the stress period. The risk-based capital requirement is based upon the scenario that requires the higher capital amount at the beginning of the stress test for an Enterprise to maintain positive capital throughout the stress period.

Although the 1992 Act defines a general level of required stringency, OFHEO must make certain determinations reasonably related to historical experience and certain determinations consistent with the stress period. For example, the regulation must set forth the shape of the Treasury yield curve during the ten-year period. The statute provides that the curve should be reasonably related to historical experience and otherwise judged reasonable by the Director. OFHEO also has discretion to determine the levels of non-Treasury interest rates, the rates of mortgage prepayments, dividend payments, and many other factors, provided that they are consistent with the stress period. The 1992 Act also requires that the stress test be made public so that it may be run by interested persons in the same manner as the Director. This requirement, together with the need to apply the same stress test to both Enterprises and the need to protect proprietary Enterprise data from disclosure, imposed certain limitations on alternative approaches that were available to implement the statute.

b. Use of Performance-Oriented Approach

The risk-based capital regulation, as anticipated by the 1992 Act, is a performance-oriented standard. Rather than a uniform ratio-based standard applied to both Enterprises without regard to their individual risk profiles, the capital standards set by the regulation are specific to each Enterprise's particular risk profile. The stress test takes into account the risk characteristics of the particular assets and liabilities and off-balance sheet obligations of each Enterprise and predicts how these specific instruments will perform under stress. Because the stress test models the entire existing business of an Enterprise, and takes into account the actions the Enterprise has taken to offset risk, there are numerous options (other than adjusting the amount of total capital it holds) for an Enterprise to satisfy the requirements of the regulation. To the extent that an Enterprise uses these other options to manage its risk, its capital requirement will be lower than it otherwise would be.

c. Alternative Levels of Stringency

The 1992 Act defines the general level of stringency of the risk-based capital regulation by requiring the Enterprises to have enough capital to survive statutorily prescribed stress conditions for a period of ten years, plus an additional 30 percent for management and operations risk. Stress conditions this severe have not been experienced nationally for a comparable period of time since the Great Depression. Within these parameters, certain decisions left to the Director's discretion affect the relative stringency of the stress test. These include decision rules for modeling credit enhancements and derivatives (including how to take counterparty risk into account), the payment of dividends, operating expenses, the issuance of debt and the investment of excess funds, rates of prepayment (which are affected by property valuation assumptions), and how to calculate the capital needed to survive the ten-year stress period.

In developing these decision rules, OFHEO exercised its discretion in a manner that it deemed consistent with the stress conditions mandated by the 1992 Act. That is, OFHEO specified other stress test conditions that were consistent with the stringency of the conditions specified in the statute. In the yield curve specification, for example, OFHEO could have chosen yield curves that would have had the effect of either greatly mitigating or exacerbating the most likely economic impact of the statutorily imposed shocks to the ten-year rate. Instead, OFHEO selected curves in both scenarios that did not, in OFHEO's judgment, have either effect.

In general, OFHEO modeled instruments according to their terms, in order to reflect accurately their performance under the conditions of the stress period. In the few instances where, because of the unavailability of data or satisfactory modeling techniques, it was not possible to model instruments in this way, OFHEO employed conservative measures, which have the effect of discouraging large volumes of activities the risk of which could not be quantified with some precision in the stress test. It follows, therefore, that the more precisely instruments and activities can be modeled, the lower the amount of capital that generally will be required. However, precise modeling requires adequate data and careful research. Therefore, the rule is structured to encourage the Enterprises to maintain and deliver good data, which will allow OFHEO to provide accurate and timely assessments of the risks of all Enterprise business activities.

d. Alternative Effective Dates

The 1992 Act provides that the regulation shall take effect upon issuance, but provides a one-year period from the effective date before the supervisory authorities that are tied to the risk-based capital level take effect.[173] These provisions override the Administrative Procedure Act (APA) requirement for a 30-day delayed effective date for substantive rules [174] and do not give the Director discretion to alter the timetable. However, a subsequent Congressional enactment, the Small Business Regulatory Enforcement Fairness Act (SBREFA), delays the effective date for rules that OMB has determined to be ''major rules'' for at least 60 days from the date they are submitted to Congress for review or the date of publication, whichever is later.[175]

OFHEO believes that the language in the two statutes can be harmonized by regarding the one-year transition period in the 1992 Act as a *de facto* delayed effectiveness date that runs concurrently with the 60-day delay required by SBREFA. In any event, SBREFA provides a good cause exception to the 60-day delayed effective date, which OFHEO has determined is appropriate to this rule. Because the 1992 Act already provides a one-year delay in enforcement of the regulation, during which Congress could act to overturn the rule if it chose, no further purpose would be served by adding on to that period the additional 60 days from SBREFA.[176] The requirement in the 1992 Act that the regulation become effective immediately reflects a Congressional determination, with which OFHEO agrees, that the public interest in safe and sound Enterprises is best served by implementing the rule without delay. The effect of an additional 60-day delay in the effective date would be to prevent OFHEO from using certain of its prompt corrective action authorities to deal with a deficiency in risk-based capital until 14 months after publication of the rule. Given that Congress has determined that 12 months is sufficient time for the Enterprises to adapt to the rule, the public interest would not be served by extending that period. On the contrary, it would not be in the public interest to further delay the effective date of prompt corrective action authorities for longer than the one-year period specified in the 1992 Act. In short, OFHEO believes the Congress has provided an ample phase-in period for the implementation of this regulation and that further delay increases financial risk with no off-setting benefit to the general public or the Congress. It should be noted, however, that, after the end of this phase-in period, OFHEO has considerable discretion in its supervisory responses, depending upon the circumstances, in the event of a risk-based capital shortfall.

e. Alternative Methods of Ensuring Compliance

Alternative methods of compliance with reporting provisions were considered. Feeds of raw data from the Enterprises, which would be processed by OFHEO, were originally thought to be the least burdensome option, but ultimately were found by the Enterprises and OFHEO to be problematic. The Enterprises commented that the data normalization performed by OFHEO to ensure that comparable data was captured for both Enterprises resulted in data translation errors. They expressed concern that resolving these errors would consume so much time after the data was submitted that accurate capital classifications could not be produced with sufficient timeliness to be useful as a regulatory tool or useful to the Enterprises in their planning. The Enterprises suggested instead that they be allowed to process their data and run a stress test specified by OFHEO using their own internal systems. They would provide OFHEO with the capital numbers, which would be presumptively final, unless OFHEO found an error.

For reasons discussed in section III.A.2., Proprietary/Internal Models, OFHEO did not agree that presumptive finality should be accorded to the Enterprises' calculations of their risk-based capital requirements. However, OFHEO agreed that allowing the Enterprises to process most of the data required to run the stress test using their internal systems and to submit a report with the data appropriately aggregated in the standardized format specified by OFHEO (along with the raw loan data used in preparing the report) would eliminate the data normalization step and allow quicker capital classifications. The final rule, therefore, requires the Enterprises to submit a

[173] 12 U.S.C. 4611(e)(1), 4614(d), 4615(c).

[174] 5 U.S.C. 553(d).

[175] If a joint resolution of disapproval is passed by Congress during the 60-day period, the rule may be further delayed if the President does not sign the joint resolution of disapproval. 5 U.S.C. 801(a)(3).

[176] Provisions in the Enterprises' respective charter acts that limit capital distributions without the approval of the Director if an Enterprise does not meet its risk-based capital requirement do not include the one-year delay specified in the 1992 Act. However, OFHEO does not intend that the risk-based capital rule will require approval of ordinary-course dividend payments, share repurchases and redemptions that an Enterprise makes during the transition year. During that period, the rule would have no impact on an Enterprise's ability to make capital distributions absent adequate notice to the Enterprise of its capital position and adequate opportunity to take reasonable and prudent steps to address any articulated deficiency. *See, supra,* section III.B.6., Interaction with Charter Act Provisions. In any event, if an Enterprise fell short of its risk-based capital requirement during the first year after the rule's effective date, OFHEO would not withhold approval of capital distributions without careful consideration of the circumstances of the shortfall. These factors could include the causes of the shortfall and the likelihood it would soon be eliminated (or had already been eliminated).

Risk-Based Capital Report that contains the data required to run the stress test, aggregated by the Enterprises according to the stress test rules of aggregation specified by OFHEO. The stress test will be run by OFHEO using model-ready inputs submitted in the Risk-Based Capital Report. The accuracy and completeness of the Report, along with the raw data from which the Report is prepared, must be certified by the Enterprise official with responsibility for capital adequacy. The preparation of the Report, including the aggregation of data in a model-ready format, is subject to OFHEO's supervision and oversight, and appropriate penalties are available for false certification.

Methods of ensuring compliance with the substantive requirements of the rule—that is, ensuring that the Enterprises maintain adequate risk-based capital as determined under the rule—are largely prescribed by statute, based on the capital classification of the Enterprise. The 1992 Act requires that these classifications be determined at least quarterly and reported to the Congress annually. The Act provides OFHEO discretion to make more frequent capital determinations, but the alternative of substituting less frequent, random classifications, which is suggested in the OMB Best Practices Guide, is not an option under the statute. OFHEO does not presently find a need to specify by regulation the circumstances under which it might make determinations of capital classifications more frequently than quarterly. However, low capital levels, high risk activities, inadequacies in risk management techniques, or various adverse events external to the Enterprises are the types of concerns that could make more frequent capital classifications prudent.

The risk-based capital rule sets the standard and the procedure for determining whether an Enterprise is undercapitalized, but does not impose a specific sanction or remedial measure in the event of noncompliance. Those sanctions or other measures are not a subject of this rulemaking. OFHEO notes, however, that, under the 1992 Act, if an Enterprise fails to meet its applicable capital standard, it must submit a capital restoration plan for the approval of the Director. In addition, the Enterprise becomes subject to restrictions on capital distributions, only some of which may be waived or modified by the Director. Also, depending upon the severity of the undercapitalization, other enforcement tools are provided, some of which are mandatory.

f. Informational Measures

Executive Order 12866 contemplates that agencies should consider voluntary public disclosure systems as an alternative to other types of regulatory mechanisms. The 1992 Act does not allow for OFHEO to substitute such a voluntary system of financial disclosure for the mandatory risk-based capital determination. However, OFHEO agrees with the general implication in E.O. 12866 that financial disclosure enhances market discipline, and has chosen to publish its capital classifications of the Enterprises, together with their total and core capital levels and their respective risk-based, minimum, and critical capital requirements. Because the Enterprises' risk-based capital levels reflect the results of the stress test, and because the operation of the stress test is transparent to the public, OFHEO views the risk-based capital rule as an important step in providing greater public disclosure of financial risk at the Enterprises. Also, OFHEO is currently considering the extent to which disclosure of other financial data about the Enterprises may serve to improve market discipline without compromising information that, for legal or public-policy reasons, should remain non-public.

Given the legal structure of the Enterprises and their dominant position in the secondary market for conventional residential mortgage loans, there are also practical limits to the extent to which informational measures alone can provide sufficient market discipline to ensure their safety and soundness. The need for OFHEO and the other regulatory structures put in place by the 1992 Act arose in large part from the public perception that the Federal Government would intervene to prevent default by either of the Enterprises or by other Government-sponsored enterprises. Accordingly, Congress has made the determination that market discipline alone will be insufficient to prevent or serve as an early warning of Enterprise failure. To avoid the potential costs and disruptions that could occur in the event of the financial failure of an Enterprise, the 1992 Act established a regulatory system with sufficiently stringent capital requirements to prevent the insolvency of the Enterprises under extreme financial conditions. The risk-based capital regulation is a mandatory aspect of that system.

g. Market-Oriented Approaches

Within the bounds of the 1992 Act, OFHEO has chosen the most market-oriented alternative available. By requiring OFHEO to base capital upon a stress test that takes into consideration both interest rate and credit risk, the 1992 Act contemplates a rule that will provide great flexibility to the Enterprises to determine the most cost-effective means to match capital to risk. OFHEO has maximized the market orientation of the statute in the regulation by using models that make risk-based distinctions between many characteristics of the thousands of different instruments, programs and activities of the Enterprises. Because the risk-based capital rule is sensitive to these distinctions, it gives the Enterprises a broad array of options in the market—including altering the risk characteristics of their assets and liabilities, using different hedging strategies, and raising capital—to maintain compliance.

OFHEO has compared its risk-based capital regulation to the risk-based capital systems in use by other Federal financial institution regulatory agencies and has found that OFHEO's is the most market-oriented approach. In particular, the system in use by bank and thrift regulators, which is essentially a set of leverage ratios that are assessed against relatively broad categories of instruments, provides the regulated entities relatively few compliance options in the marketplace. Although a financial institution may adjust its portfolio to hold relatively fewer risky assets, these ratios do not take into account many risk-mitigating actions that an institution might take to hedge its risk.[177] Further, the 1992 Act already specifies separate leverage ratios in the form of minimum and critical capital levels, which OFHEO has implemented in its minimum capital regulation. Other systems in use for assessing financial institution risk, such as value-at-risk models, are designed to serve more limited purposes (such as assessing risk in a trading portfolio) and are inappropriate to determine capital for an entire financial institution involved in diverse business activities and are inconsistent with the statutory mandate for a stress test. For these reasons, OFHEO concluded that its risk-based capital rule utilizes the most market-oriented approach reasonably available

[177] The recent Basel proposal is more risk-sensitive than the current capital regime. It would provide for more consideration of credit risk hedges, although the credit risk part of the proposal is ratio-based. Committee on Banking Supervision, ''A New Capital Adequacy Framework,'' Bank for International Settlements, Basel, Switzerland (June 1999). A copy of this document may be obtained from the BIS website at *http://www.bis.org.*

to determine risk-based capital for the Enterprises.

h. Considering Specific Statutory Requirements

When a statute establishes a specific regulatory requirement and the agency has discretion to adopt a more stringent standard, E.O. 12866 provides that the agency should examine the benefits and costs of any more stringent alternative the agency proposes as well as the specific statutory requirement.

As explained above, OFHEO has proposed a standard that is consistent with the stringency provided for in the 1992 Act. The 1992 Act requires OFHEO to specify those elements of the stress test that are not specified or not specified fully in the Act, but in most cases, the specification must be either reasonably related to historical experience or consistent with the stress period. Within these statutory guidelines, OFHEO has significant discretion to make decisions about the assumptions and operation of the stress test. The specifications for some of these elements of the stress test have the potential to increase or decrease the overall stressfulness of the regulation. In each such case, OFHEO has chosen specifications that are consistent with the conditions of the stress period.

Yield curve specifications provide an example of a choice OFHEO made that is consistent with the conditions of the stress period. Both the flat yield curve in the up-rate scenario and the upward-sloping curve in the down-rate scenario are within the range of yield curves that have been experienced frequently. Some comments complained that these curves can result in short-term interest rates receiving a greater shock than long-term rates.[178] However, as explained in detail in the preamble to the final rule,[179] OFHEO found that such a result is most consistent with the changes in the ten-year rates, based upon historical experience. That is, when interest rates have risen precipitously in the past, yield curves have tended to flatten. When they drop precipitously, yield curves tend to steepen. Similarly, although yield curves never actually maintain a static slope over time, OFHEO found that maintaining a constant slope was most consistent with the 1992 Act's specification of a constant ten-year CMT and was the approach that best reflected the level of stringency intended in the statute.

[178] If the yield curve is upward sloping prior to the beginning of the stress test, short-term rates will move farther than long term rates in the up-rate scenario, and less than long-term rates in the down-rate scenario. If the yield curve is inverted or downward sloping, the opposite effect will occur.

[179] Section III.G.2.a., Specification of the Flat Yield Curve in the Up-Rate Scenario.

4. Analysis of Costs and Benefits

a. Introduction

Executive Order 12866 provides that the issuing agency will establish a baseline against which the agency should measure a rule's resulting costs and benefits, including those that can be monetized and those that cannot. The agency must then explain how it weighed these costs and benefits in reaching its decision on the regulation. The Executive Order recognizes that in many cases the agency is required by statute to act notwithstanding the outcome of this cost-benefit analysis, but asks that it be performed nevertheless, so that the impact of the regulation can be understood and to show that the costs and benefits of any options that were available to the agency under the statute were weighed appropriately.

Executive Order 12866 also contemplates that, if a regulation is composed of a number of distinct provisions, the benefits and costs of these different provisions will be evaluated separately. The preambles to the final rule and the proposed rules break down the rule into such distinct provisions and detail the decision-making in each. These decisions typically were made after weighing the delays and costs of more precise modeling against the likely impact of that greater degree of precision on modeling. Because the number of decisions is large and the interaction effects of these decisions are extensive, it is impractical to analyze all possible combinations of possible decisions as to every provision in the rule. Therefore, only those provisions that OFHEO has found to be most significant or controversial have been targeted for analysis in this economic analysis.

b. Baseline

Because the risk-based capital regulation is mandated by Congress, OFHEO was faced with two choices for determining a baseline from which to measure costs and benefits of the regulation. OFHEO could either use a baseline scenario that assumes that the statutory requirement was absent, or a baseline that assumes that the statutory requirement is present but no regulation is adopted. For the purpose of this analysis, OFHEO chose the latter.

The Enterprises have stated publicly that they support the stress test that is embodied in the 1992 Act and implemented by the rule and that they would apply a stress test and maintain capital in compliance with the 1992 Act voluntarily in the absence of a rule. The baseline scenario assumes, therefore, that each Enterprise constructs a stress test, determines its risk-based capital requirement, and submits the information to OFHEO quarterly. However, these voluntary numbers, which are not produced pursuant to a risk-based capital rule, could not form the basis for the Enterprises' capital classifications. The 1992 Act requires that until one year after OFHEO publishes its risk-based capital regulation, OFHEO must base the capital classifications upon the minimum and critical capital levels only.[180] Consequently, capital classification and supervisory actions related to capital classifications would continue to be based on the minimum and critical capital requirements. The baseline scenario also assumes that, although no standardized risk-based capital data submission would be required, the same types of information would be made available to OFHEO for the purpose of its examination and supervisory responsibilities, including examining the stress tests constructed by the Enterprises and the accuracy of the internal capital requirements produced thereby.

c. Benefits of the Rule

The benefits of the final rule over the baseline scenario are numerous. They accrue to the Federal Government (and hence taxpayers), the Enterprises, homeowners, and capital market participants. The most obvious and important of these benefits to all four groups is a reduced risk of failure of the Enterprises. The Enterprises have a dominant position in the secondary mortgage market and are a major presence in the debt markets. Were either Enterprise to fail, the disruption to the housing and financial markets likely would be significant. It could affect the cost of financing for housing and the availability of new housing, particularly affordable housing. The regulation will reduce the risk of failure by providing objective, conservative, and consistent standards for capital at the Enterprises. It will provide maximum transparency, create greater comparability with the capital requirements for other financial institutions, and allow OFHEO to respond quickly to capital weakness at an Enterprise.

The economic distress of Fannie Mae in the 1979–1985 period was significant and the 1992 Act was, in part, a response to Congressional concern that,

[180] 12 U.S.C. 4614(d).

but for a fortuitous change in interest rates, Fannie Mae might have collapsed, costing investors or the Government billions of dollars. Because of the growth of the Enterprises, a failure today could result in much greater loss. Depending on the response of the Government to such a failure, significant disruption to the financial and housing markets, significant burdens on taxpayers, or both would result. The losses resulting from the savings and loan crisis in the late 1980s, which ultimately were borne by the U.S. taxpayer, are estimated at more than $100 billion. However, the Enterprises have considerably more dollar exposure than the entire savings and loan industry had in 1986. Also, because of the central role of the Enterprises in the affordable housing market, an Enterprise failure could have adverse impacts on the availability and affordability of housing in many areas of the United States.

The regulation has another important public benefit. A capital standard is likely to be more conservative if it is determined objectively and consistently for both Enterprises in a transparent and evenhanded way by an agency of the Government responsible for their safe and sound operation than if it is determined voluntarily by each Enterprise. The Enterprises, by virtue of their structure, have far less incentive than OFHEO to make conservative choices in the construction of the stress test. They, like other privately owned financial institutions, are subject to shareholder pressure to increase earnings per share. In the absence of substantial market discipline (based on fear of insolvency), a simple way to increase earnings per share is to increase capital leverage, which reduces capital ratios. In addition, non-compliance with the risk-based capital rule subjects an Enterprise to statutory restrictions on capital distributions and to special supervisory measures that could be imposed by OFHEO. Further, in the baseline scenario, the capital requirement for each Enterprise would be determined by a model tailored to that Enterprise's business mix and methods, and there would be no comparability between the two capital standards even if the risk profiles were the same. In sum, shareholder pressures, competitive pressures, and the lack of a binding regulation would likely result in weak and inconsistently applied standards.

Government involvement in and approval of capital standards is essential to create public confidence that they are appropriately stringent, transparent, and fair. Government oversight and enforcement also foster public confidence that the Enterprises are complying with those standards. It is significant that, at least in the United States, Federal regulators determine the required capital levels for all federally regulated depository institutions. Given the sensitivity of econometric models to changes or variations in the economic analyses and assumptions that underlie them, the public would be appropriately skeptical of a system of risk-based capital standards based on stress tests designed, run, and monitored by the Enterprises themselves.

Further, although OFHEO's risk-based capital regulation falls within that class of regulations that the agency is required to issue notwithstanding the findings of the cost-benefit analysis, no commenters urged OFHEO to support a statutory change to allow self-regulation or eliminate the requirement for risk-based capital rules for the Enterprises. Rather, commenters generally agreed that well defined and stringent capital standards are important to ensuring the safety and soundness of the Enterprises. Moreover, as explained below, the costs of an effective risk-based capital rule are small relative to its significant and apparent public benefits.

A unique benefit of OFHEO's risk-based capital rule is its sensitivity to the credit and interest rate risk in each Enterprise's business. The marginal capital associated with the assets, liabilities and off-balance-sheet instruments of the Enterprises varies, not only based upon the characteristics of the particular instrument, but also based upon the mix of instruments in each Enterprise's portfolio.[181] The stress test also takes into account the economic conditions as of the date for which the stress test is run. For example, if housing prices have been rising prior to the as-of date, a given portfolio of seasoned loans will have a lower credit loss experience than if prices have been declining, all other factors held equal. Likewise, current interest rates may have a significant impact on the amount of capital required of an Enterprise, depending upon how well hedged the Enterprise is against interest rate risk.

The existence of a rule that complies with the statutory mandate for notice and comment and replicability will create greater transparency and promote more market discipline than a voluntary system. Further, because OFHEO will design and run the stress test, OFHEO may be able to act more quickly to deal with capital inadequacies that may arise. Also, the rule is forward-looking, which helps ensure that capital is built up as stressful economic periods develop, before losses occur. As a response to the regulation, OFHEO anticipates that the Enterprises may choose to build up a capital cushion during favorable economic conditions, when capital is inexpensive, to avoid having to raise capital or hedge risk in other ways during tough economic times. The Enterprises have, in fact, increased their capital levels since 1993 in response to the 1992 Act and in anticipation of OFHEO's capital rules. Another benefit of the rule is that it rewards risk reduction by the Enterprises with a lower capital requirement, providing appropriate incentives to the Enterprises to hedge risk.

The transparency of the stress test will improve the ability of market participants to evaluate each Enterprise's risk profile, risk management techniques, and capital adequacy. The existence of an independent and objective evaluation of capital adequacy and the knowledge that prompt supervisory action is available to correct deficiencies are likely to inspire greater investor confidence, which may lower the cost of debt and capital to the Enterprises. To the extent that these savings are passed along to consumers, the regulation may benefit homeowners with lower mortgage costs. To the extent they are not passed along, shareholders will benefit, offsetting, in part, any increase in capital costs. Most importantly, conservative, objectively determined capital standards mean that the Enterprises are more likely to be able to continue to perform their important public purposes, such as purchasing low- and moderate-income residential mortgage loans.

d. Costs of the Rule

OFHEO has also considered whether there are certain costs, tangible and intangible, associated with the regulation—that is, with a system of mandatory rather than voluntary compliance. First, there will be a reporting cost to the Enterprises. As a result of the need to report data in a standardized format there may an initial cost associated with the need to adapt existing computer systems to accommodate the periodic reporting within the regulatory time frames. However, these costs have largely been incurred already as OFHEO has worked with the Enterprises to obtain the data necessary to design and run the stress test.

[181] *See* NPR2 section II.B Sensitivity of Capital Requirement to Risk, 64 FR 18097 (April 13, 1999).

There will be personnel costs to the Enterprises associated with preparation and certification of the quarterly data submissions. However, similar reporting would be required of the Enterprises even in the absence of the risk-based capital regulation, because OFHEO would need much the same data in order to monitor closely the Enterprises' internal modeling of the stress test and to support OFHEO's research and analysis functions. Therefore, there is no certainty that reporting costs to the Enterprises under the regulation will be significantly higher than under the baseline scenario. Further, any possible cost savings to the Enterprises in the baseline approach would be offset by an increase in OFHEO examination time. This increase would occur because, in the absence of a risk-based capital regulation, OFHEO would need to spend considerably more examination resources than are currently budgeted to validate the computer models (including the databases upon which the models are estimated and operated) that the Enterprises construct to run their internal stress tests. Examination of the Enterprises' computer models will continue to be an important aspect of OFHEO's functions after the risk-based capital rule is implemented. However, if risk-based capital were to be determined based upon the output of a single internal model at each Enterprise, that model would require far more intense scrutiny than other business models. Further, OFHEO would still need to maintain its internal modeling capability in order to perform its research and analysis functions under the 1992 Act. The net result would be considerably more expense for OFHEO than the approach in the regulation.

It has been argued that under the voluntary system, the Enterprises might be freer to modify many aspects of the stress test as soon as new data become available, because they would not have to wait for a regulator to determine capital treatments as their businesses change. If this were true, it might allow them to align their capital with risk more quickly than under the regulation. OFHEO views this benefit of a voluntary system as speculative, at best. OFHEO would require sufficient internal controls at the Enterprises to insure that treatments of new activities were appropriately conservative and capital calculations accurate. Moreover, OFHEO has streamlined its procedures to deal with new activities and other modeling issues that arise in order to provide prompt decisions on appropriate treatments. It is not clear that internal systems at both Enterprises that are designed to do the same thing would be less expensive or time-consuming. It is clear, however, that the determinations made under such internal systems would lack the transparency of similar determinations made by OFHEO. It is also likely that the financial markets would have greater confidence in the objectivity and fairness of decisions of a Federal regulatory agency than in the internal decisions of the Enterprises. Greater confidence in the capital numbers could well reduce the overall cost of debt and capital to the Enterprises.

Each Enterprise could argue that its allocation of capital cost to various individual financial instruments would likely be different under a voluntary system, but each Enterprise allocates capital costs differently and bases those allocations upon numerous business considerations in addition to the capital regulations. OFHEO has found no basis for concluding that the rule would cause the Enterprises to change their internal capital allocations to impose any material additional cost on the various housing programs that comprise a primary mission of the Enterprises. Further, OFHEO has found that the capital requirements in the rule will not increase the cost of housing generally or create other costs to the housing market or the larger economy.

e. Costs and Benefits of Alternatives

The stress test contains many components and OFHEO considered numerous means to design and implement each of them. As explained in section IV.A.1., Introduction, the various combinations of these alternatives are so numerous that it would be impractical to discuss each possible combination. The preambles to the proposals and final rule examine the alternatives related to each individual decision discretely, and the preamble to the final rule analyzes the overall result for reasonableness and compliance with statutory intent. In addition, in the economic analysis below, OFHEO highlights selected issues that could have a significant impact on the amount of capital that an Enterprise might be required to hold and discusses the various alternatives considered as to these core issues.

(i) Determination of the Benchmark Loss Experience

A threshold issue in creating the stress test was determining the rates of default and severity "that occurred in contiguous areas of the United States containing an aggregate of not less than 5 percent of the total population of the United States that, for a period of not less than 2 years, experienced the highest rates of default and severity of mortgage losses * * *" [182] OFHEO considered numerous alternative statistical methodologies to make this determination. These included various methods for determining what constituted a "contiguous area," different methods for measuring default and severity rates, different potential databases that could be used in the analysis, and different methods of averaging and weighting the data from the two Enterprises.

The 1992 Act provides no guidance to OFHEO as to how a "contiguous area" should be defined. OFHEO decided to define the term to mean a group of contiguous states. Under this definition each state in the area must share a common border with another state in the area—the states could not simply meet at a point. OFHEO considered using smaller units, such as the first two or three numbers of zip codes. In general, the smaller the unit that is used in the aggregation, the higher the benchmark loss rate that would be determined. By connecting pockets of severe losses with narrow parcels of land, OFHEO could have created an area with much higher loss rates than the benchmark loss experience that was identified in NPR1. However, commenters on the issue unanimously supported the use of states as the smallest geographic unit, and suggested that using smaller units would create computational difficulties and likely result in an area that would look "gerrymandered." OFHEO found that conducting analysis at a state level is a common rating agency practice and was the most logical, efficient and reasonable approach to construct a benchmark area. Larger areas, such as Federal Home Loan Bank districts and Census Regions, were considered, but because each of these areas was comprised of a fixed group of states, they did not provide the same flexibility or range of potential areas as OFHEO's approach. Accordingly, they were less likely to identify an area of the country that had experienced sufficiently stressful economic circumstances to be appropriate for the stress test defined in the 1992 Act. OFHEO also considered a Freddie Mac suggestion that would have altered the formula for selecting areas for comparison to include a "compactness" requirement, but determined that this suggestion was inappropriate and unworkable. OFHEO disagreed with Freddie Mac that the proposed methodology did not result in reasonably compact areas. Moreover,

[182] 12 U.S.C. § 4611(a)(1).

Freddie Mac's suggestion would have imposed an additional requirement, ''compactness,'' that goes beyond what the 1992 Act specified and could well preclude identification of an appropriately stressful credit environment.

OFHEO also considered a number of options in deciding how to determine what event would constitute a default and how to measure the severity of a loss for purposes of the benchmark analysis. OFHEO considered including loans that had been subject to ''loss mitigation'' procedures (which ordinarily indicates that payments are not current on a loan), in addition to loans that resulted in preforeclosure sales, foreclosure, deed-in-lieu, or credit loss. OFHEO decided not to include loss mitigation events as defaults, because data were not adequate to identify them.

OFHEO considered whether to use loss severity rates in the benchmark analysis with or without the effect of mortgage insurance or other third-party credit enhancements taken into account. OFHEO determined that the purposes of the 1992 Act were better served by using loss severity rates without consideration of credit enhancements in determining where and when mortgage losses were highest. The Act requires OFHEO to identify the highest credit losses on mortgages, not the highest net credit losses to the Enterprises. Further, this methodology is more consistent with the stress test in the final rule, which first calculates losses on mortgages and then determines the extent to which those losses are reduced by credit enhancements.

OFHEO based the benchmark determination upon data on the Enterprises' loans. OFHEO considered using other loan data, including databases that were available on Federal Housing Administration loans and credit bureau data. As explained in NPR1, OFHEO decided that the Enterprises' loan data would be the most relevant source from which to determine a benchmark loss experience for the Enterprises. The quality and detail of those data are such that they reflect losses in recent periods as well as or better than data from any other sources. Moreover, using the Enterprises' data eliminates the problem of having to sift out loans that would not be eligible for purchase by the Enterprises or otherwise not be representative of the loans they purchase.

Having determined that the Enterprises' loan data were the best database for the analysis, OFHEO considered which group or groups of loans from that database would be used to compare the many different state/year combinations that meet the population and contiguity requirements. The Enterprise loan data include information on loans of many different types (fixed rate, adjustable rate, balloon, graduated payment, second mortgages, etc.), supported by various types of residential collateral (single-family detached homes, planned unit developments, condominiums, multifamily buildings, two-to four-unit homes, etc.). OFHEO considered which of these loan and collateral types would be appropriate to include in an analysis of the worst loss experience that met the statutory criteria. In order to have a common loan type for comparison among potential benchmark periods and areas, OFHEO limited its analysis to 30-year, single family, fixed-rate mortgages. This group of loans was chosen because the Enterprises historically have purchased large volumes of them and because they are relatively homogenous, meaning their terms and conditions are relatively uniform as compared to the other loan and collateral types.

OFHEO also considered whether to take the loan-to-value ratio (LTV) of loans into account in determining the benchmark, because this ratio is highly correlated with loan losses. A method of doing so, which OFHEO considered, would determine loss rates by various LTV ranges and then compute overall default or loss rates by assuming some standard distribution of LTV ratios and weighting the LTV-specific loss rates according to this distribution. OFHEO did not use either of these alternative methodologies. Instead, OFHEO decided to compute loss rates for candidate benchmark periods and areas on a dollar-weighted basis only, without regard to LTV, for three reasons. First, in many candidate periods and areas, there were too few loans in some LTV ranges to use the LTV-weighting approach. Second, OFHEO found no acceptable basis for using any specific, standardized LTV weights. Finally, OFHEO was concerned that the LTV weighting approach might be inconsistent with the 1992 Act, because it would not identify the part of the country where mortgage losses were highest.

Other methodological alternatives were considered by OFHEO in the procedures for combining the default and severity rates of the two Enterprises. OFHEO chose to calculate the default and severity rates for each Enterprise separately for each candidate period and area and to use the average of the experience of the two Enterprises. OFHEO also considered averaging the rates based upon the market share of the two Enterprises, as suggested by the Department of Housing and Urban Development, but finally determined that attempting to determine the historical relative market shares of the two Enterprises would be difficult. Further, OFHEO found the experiences of both Enterprises equally relevant to a determination of the highest rates of default and severity and, for this reason also, decided to weight their data equally.

(ii) General Modeling Approach

This discussion of the general modeling approach focuses on the macro-decisions made by OFHEO in the development of the stress test. Given the importance placed upon aligning capital to risk, OFHEO chose to model the Enterprises' books of business as precisely as possible. Examples of the decisions made by OFHEO that attempt to balance the costs against the benefits of precision are discussed below.

As a threshold matter, OFHEO chose to use a cash flow model that, to the extent possible, determines the cash flows for most instruments according to their terms, taking into account the availability of data and the need to avoid excessive complexity and regulatory burden. OFHEO could have chosen a simpler type of model that calculated gains and losses on most instruments as ratios of a few baseline instruments. For example, OFHEO could have assumed that losses on all other loan types were a fixed multiple of losses on a fixed rate, 30-year, owner-occupied mortgage loan. The benefit of such a model would have been its relative simplicity, but the costs of such an approach would have been a decrease in both the sensitivity of the stress test to risk and the usefulness of the stress test in aligning capital to risk.

Some commenters suggested that OFHEO adopt an approach similar to those adopted by the Farm Credit Administration (FCA) and the Federal Housing Finance Board (FHFB), which involve, to varying degrees, the use of internal proprietary models. OFHEO considered using internal models, but differences in regulatory responsibilities make the FCA and FHFB approaches unworkable for OFHEO. The entire statutory scheme governing the regulation of the Federal Home Loan Banks by the FHFB, including the Banks' ownership and capital structure, is very different from the regulatory framework established by the 1992 Act for the Enterprises. It is, therefore, reasonable to expect that a very different type of capital regulation would be required. The statutory language governing FCA's risk-based capital regulations for the Federal Agricultural Mortgage Corporation is very similar to the language in the 1992 Act, but, because FCA's regulation applies to only one entity, FCA did not have the same concerns about consistency between Enterprises that OFHEO does. For the purpose of regulating Fannie Mae and Freddie Mac, OFHEO determined that the practical difficulties of implementing and monitoring proprietary, internal models that are consistent with OFHEO's statute more than offset any benefit associated with the use of such models. Most importantly, OFHEO believes that an independently constructed and administered stress test that measures risk consistently in both Enterprises is the best method to insure adequate capitalization of the Enterprises.

(iii) Interest Rates—Yield Curves Considered

The 1992 Act establishes the yield on the ten-year constant maturity Treasury (CMT) precisely, but for other CMTs requires only that they move in patterns and for durations relative to the ten-year CMT that are reasonably related to historical experience and that are determined to be reasonable by the Director. OFHEO interprets this latter requirement to require that the yield curves be reasonable within the context of the stress test and the overall purposes of the 1992 Act.

To select the yield curves, OFHEO examined historical average yield curves subsequent to significant interest rate movements and observed that they were consistently flatter the more the ten-year CMT yield increased and consistently steeper the more the ten-year CMT yield decreased. Consequently, OFHEO selected yield curves that reflect this general tendency. The yield curve in the up-rate scenario is flat for the last nine years of the stress period. In the down-rate scenario, the yield curve is upward sloping.

In selecting the yield curve for the stress test, OFHEO was guided by the general level of stringency of the statutorily prescribed interest rate changes and was mindful of the effect on the relative level of stress of holding the yield curve constant for a period of nine years. In the historical data, OFHEO observed more steeply sloping yield curves than the one selected in the down-rate scenario, and also observed that in periods of rapidly rising rates the yield curve is sometimes inverted. If OFHEO had chosen to hold the yield curve constant at these more unusual slopes, the stress test would have been more stressful than with the yield curves selected. Instead of these yield curves, which only exist for short periods of time, OFHEO selected yield curves that are more representative of a long-term average after a severe interest rate shock and that are, nevertheless, unusually stressful.

(iv) Interest Rates—50 Basis Point Premium on Enterprise Cost of Funds

Because the stress test at times generates a need for additional funding (for example, when Enterprise debt matures more quickly than loans in portfolio), it was necessary for OFHEO to adopt a decision rule about the rates at which new debt would be issued. NPR2 specified that after the first year of the stress period, a 50-basis-point premium would be added to the projected Agency Cost of Funds to reflect the premium that would be demanded by the market as a result of the credit and interest rate stress conditions. The proposal was based on a review of historical data, which showed a widening of greater than 50 basis points between Enterprise borrowing rates and the ten-year CMT in response to economic stress on another Government-sponsored enterprise. Upon consideration of the comments on this issue and after examination of the relevant historical data and the impact of the premium on capital requirements, OFHEO decided not to apply the premium to the Agency Cost of Funds in the final rule.

OFHEO was not convinced by arguments from commenters that the market would not demand a premium because investors would rely on the implied Federal guarantee and the Federal regulatory structure to prevent failure or because other spreads have allegedly widened by as much or more historically than Government-sponsored enterprises. The data are too sparse to support either of these conclusions. There has been only one, relatively brief, period of time in the early 1980s when one of the Enterprises experienced financial stress approaching the magnitude specified in the stress test. The only other similar event involved the Farm Credit System in the mid-1980s.

However, as some comments noted, it is possible that whatever events might cause a widening of the spread between the Enterprises' debt rates and Treasuries could also widen spreads of other interest rates and Treasuries. These spreads have an important effect on the value of hedging instruments and some Enterprise asset returns, and further consideration of these spreads may be appropriate. Current data are insufficient to determine appropriate spreads to the various non-Treasury rates in the stress test, and data for determining an appropriate debt premium are sparse. Consequently, OFHEO determined not to include a premium on new debt in the final rule at this time. This is, however, a likely area for future research and for refinement of the rule, because assumptions about these various spreads may comprise an area of significant risk to the Enterprises.

(v) Property Valuation—Inflation Adjustment

The 1992 Act requires that if interest rates rise by more than 50 percent of the average ten-year CMT for the nine months prior to the start of the stress test, losses must be adjusted to account for general inflation. The stress test implements this requirement by increasing house prices by the amount any ten-year CMT, after the upward shock in interest rates, exceeds a 50 percent increase in the average ten-year CMT from the nine months prior to the start of the stress period. This amount is compounded over the remainder of the stress period for a cumulative inflation adjustment and applied during the last 60 months of the stress period.

Some commenters argued that house prices should be increased by the entire amount of the increase in the ten-year CMT, rather than just the component in excess of a 50 percent increase. OFHEO rejected this alternative based on OFHEO's analysis of historical experience of housing prices during periods of general inflation (as explained in the section III.H.1.b., Inflation Adjustment) and because it would have essentially negated the credit stress of the benchmark loss experience.

(vi) Mortgage Performance—General

Models of mortgage performance comprise the central core of the stress test. Models were the most viable means of complying with the statutory requirements that the loss rates produced by the model be reasonably related to the benchmark loss experience and that appropriate distinctions be made among different types of mortgage products. These models calculate prepayment and default rates and the dollar losses associated with the defaults based upon various economic variables. The models were estimated from data on millions of loans that were purchased by the Enterprises between 1975 and 1999. Creating a model that produces reasonable projections of loss under a wide variety of economic conditions and starting portfolio positions was a complex task, which involved extensive economic analysis and the examination and testing of many different variables. The decisions made by OFHEO in creating the models are discussed in detail in the preambles to NPR2 and the final rule. The most significant of these decisions are summarized below.

(vii) Modeling Conditional vs. Cumulative Rates

Among the threshold issues confronting OFHEO was whether to construct statistical models of conditional rates of loan defaults and prepayments or to adopt a less detailed approach, such as calculating only cumulative rates and distributing them in fixed percentages across the ten years of the stress period. A conditional rate of default or prepayment refers to the volume of loans that default or prepay during any period, expressed as a percentage of the total volume of loans surviving at the start of that period. The term ''surviving loans'' means those from the group that have not previously prepaid or defaulted. A cumulative rate of default or prepayment is the total percentage of a group of loans that default or prepay during the entire period being studied (such as the ten-year stress period). A group of loans studied over a ten-year period would have a single cumulative default rate, but would have 120 monthly conditional default rates.

Comments regarding this aspect of the model were mixed. In their comments regarding the ANPR, the Enterprises favored using a cumulative rate model of defaults, with Freddie Mac suggesting that a cumulative rate of default be extracted from the benchmark loss experience and the resulting default events be distributed evenly across the stress period. It was argued that the cumulative approach was much simpler and would avoid possibly overstating defaults in the up-rate scenario. Other commenters urged a model of conditional default rates that would take into consideration the differences in prepayment rates in high-rate and low-rate environments. After a conditional default and prepayment rate model was proposed in NPR2, the Enterprises did not object further.

The final rule uses conditional rather than cumulative default rates in the stress test. For single family mortgages, the final rule uses statistical models for the conditional rates of both default and prepayment. For multifamily mortgages, the final rule combines a statistical model of conditional default rates with simple rules for setting conditional prepayment rates. In NPR2, five separate statistical models of conditional multifamily prepayments were proposed. OFHEO considered comments about the adequacy of the data to support these models, whether the models accurately reflected costs incurred for prepayment within yield maintenance or prepayment penalty periods, and the overall complexity of the models, and decided that statistical models of conditional prepayment for multifamily mortgages would not provide greater precision or risk sensitivity than the simple set of prepayment rules implemented in the final rule.

The advantages of using conditional rates are numerous. This approach automatically accounts for the impact of prior defaults on the number of loans remaining active and subject to the risk of prepayment, and, conversely, the impact of prior prepayments on the number of loans remaining subject to the risk of default. This feature is essential to developing a reasonable representation of Enterprise mortgage cash flows across the different economic scenarios envisioned by the stress test. It also avoids potential numerical anomalies that might arise when total or annual defaults during the stress test are fixed, such as years in which total defaults would exceed total surviving loans due to high prepayment levels in the declining rate scenario of the stress test. Also, the periodic nature of mortgage payments, scheduled amortization, and the coupon adjustments on adjustable rate loans, all of which affect mortgage performance, require a model that predicts an exact number of default and prepayment events in each discrete time period of the stress test.

OFHEO believes that a statistical model of conditional defaults and prepayments is more accurate and more sensitive to stress test economic factors, and to the Enterprises' starting books of business, than are simpler methods that might be developed. Each quarter the test is applied, a statistical model can account for changes in economic conditions (such as the level and shape of the Treasury yield curve or recent trends in house prices) and the composition of an Enterprise's business since the last time the test was performed. That is, the rates of default and prepayment applied when the stress test is run are adjusted to reflect current circumstances. Such adjustments are particularly important because mortgage prepayment and default rates are highly time-dependent, characteristically increasing during the first years following origination, peaking sometime between the fourth and seventh years, and declining over the remaining years. However, this time-dependent pattern is itself affected by economic conditions.

Another advantage of modeling conditional default and prepayment rates is the support this approach provides for the proper treatment of loss severity. Loss severity is affected significantly by factors that affect the timing and amount of defaults in the stress test. Loss of loan principal balance, the single largest cost element in determining loss severity, is dependent upon house price declines, which are dependent upon economic conditions leading up to the date of default. Funding costs are also affected by the changing interest rates in the stress test. For all of these reasons, using conditional default and prepayment rates during each month of the stress period greatly improves the sensitivity of the stress test to risk factors.

(viii) Use of Joint Default/Prepayment vs. Total Termination Models

Another key issue for OFHEO was whether or not to use joint prepayment and default models, in which the conditional rates of default and prepayment interact statistically, or to use some simpler assumptions about how default and prepayment rates relate to each other in the stress test.

Fannie Mae favored the use of a statistical model that would determine only total terminations (defaults plus prepayments) in each of the two stress test scenarios. The Enterprise further commented that total defaults in each scenario be set at levels that occurred in the benchmark loss experience. Prepayments would be calculated by subtracting total defaults from total terminations. Fannie Mae viewed this approach as consistent with industry practice and asserted that it would be easier for the company to manage a capital standard based on such an approach than one based upon a joint statistical model.

Freddie Mac commented that a joint statistical model of default and prepayment rates would be preferable to total termination models in the stress test context because (1) joint models ensure that defaults and prepayments correctly ''add up'' to total mortgage terminations, (2) total termination models put undue focus on interest rate movements because default is a small part of total termination under normal conditions (an assumption Freddie Mac found unwarranted in a stress test environment), and (3) standard total termination models capture small effects such as seasoning that would unnecessarily complicate the stress test. However, Freddie Mac did not recommend that OFHEO use joint statistical models in the stress test, asserting OFHEO would have difficulty using the data from the benchmark loss experience to estimate the models. Instead, Freddie Mac recommended estimating a statistical equation for prepayments based on historical data from a distressed region to factor prepayments into the stress test, while using cumulative default rates from the benchmark loss experience as the stress test default rates.

As discussed in greater detail in section III.I.1.a., Modeling Approach, the final rule uses joint statistical models in the stress test for single family loans, reflecting the recommendations of many other commenters.[183] In doing so, OFHEO recognized that models of mortgage performance are actually models of borrower behavior—individual borrowers' decisions whether to continue making monthly mortgage payments, to prepay, or to default. This ''options theoretic'' conceptual framework, which underlies the joint determination of defaults and prepayments, is the basis for nearly all mortgage performance research. In sum, the joint modeling approach is based on well known and accepted statistical methods that are widely applied in mortgage performance research. Researchers have found multi-choice statistical models to be necessary for this research, because the borrower's options to default or prepay are interrelated.

OFHEO considered the use of total terminations models, such as those recommended by Fannie Mae's comments on the ANPR, but found joint statistical models superior for theoretical reasons noted above and also for reasons cited by Freddie Mac in its comments. However, Freddie Mac's recommendation to estimate statistical prepayment equations using historical data from a distressed region while using the cumulative default rates from the benchmark loss experience was also determined by OFHEO to be inadequate for the purposes of the regulation. Instead, OFHEO addressed Freddie Mac's concern about the use of joint models—specifically, the difficulty of retaining a reasonable relationship to the benchmark loss experience—in OFHEO's decisions to adjust the underlying default and severity equations to replicate the benchmark loss experience, as noted below.

(ix) Relating Mortgage Loss Rates to the Benchmark Loss Experience

One of the challenges in developing a suitable model of mortgage performance was the statutory requirement that the stress test retain a reasonable relationship to the benchmark loss experience, while also taking into consideration a variety of variables such as house price changes, loan seasoning, and loan type. Ultimately, OFHEO chose to relate the stress test losses to the benchmark loss experience in two ways. First, the rule applies certain economic factors from the benchmark area and time period—specifically, house prices, rent growth rates and rental vacancy rates—in the stress test. Second, OFHEO applied the single family mortgage model to the loans used to determine the benchmark, broken down by loan-to-value ratio (LTV) category and using the actual interest rates from the benchmark period. The default and severity rates predicted by the model were then compared to the higher actual benchmark rates for each LTV category. Ratios of actual to predicted rates for each category are applied in the default and severity equations used in the stress test to increase credit losses to a level reasonably related to the benchmark loss experience.[184] Modeling the effects of differences in starting coupons and interest rates from the benchmark loss experience was possible because OFHEO's database allowed the models to be estimated based upon a broad and representative sample of historical mortgage performance data. The statistical equations therefore yield reasonable estimates that can be used to project mortgage prepayment under many different circumstances, including stress test interest rate scenarios.

There were many different alternatives that OFHEO could have selected to relate stress test loss rates to the benchmark loss experience. For example, comments on the ANPR suggested that OFHEO apply the cumulative default rate from the benchmark loss experience directly to the current books of business in the stress test. OFHEO considered this option, which seems simpler in concept than predicting conditional default probabilities. However, OFHEO determined that attempting to make adjustments to benchmark default levels to take into account the various factors specified in the statute and other appropriate factors would be more complex and less likely to yield reasonable capital requirements than the approach selected. OFHEO also considered an approach, which was proposed in NPR2, that would apply the same benchmark adjustment or calibration factor to all single family loans regardless of the LTV category. Although simpler than the final rule, this approach was criticized by many commenters for failing to take into consideration the mix of LTVs in the benchmark loss experience, because the difference between model predictions and the actual loss rates in the benchmark loss experience varied significantly between LTV categories. Accordingly, in the final rule, different benchmark adjustment factors are applied for each LTV category.

To summarize, the methodology OFHEO selected relates losses in the stress test to the benchmark loss experience in a manner that is reasonable within the context of the entire stress test. More specifically, the mortgage performance models, with the benchmark adjustments, not only generate loss rates that are consistent with the benchmark loss experience, but also produce reasonable loss rates under a wide variety of starting positions under both the up-rate and down-rate scenarios. No alternative has been suggested that, in OFHEO's view, would accomplish these objectives as well as the final rule.

(x) Single Family Mortgage Performance

(a) Default and Prepayment Variable Selection

In selecting appropriate variables to project single family default and prepayment rates during the stress test, OFHEO considered only variables that had strong intuitive as well as statistical causal relationships with mortgage defaults or prepayments. As reflected in Table 8, certain variables that strongly influenced prepayment behavior did help to explain defaults. All three single family models simulate defaults and prepayments based on projected interest rates and property values and on variables capturing the mortgage risk characteristics described below.

[183] OFHEO found it necessary to use a simpler methodology for multifamily loans. Because the multifamily model utilizes a set of prepayment rules, the model is ''joint'' only to the extent that conditional prepayment and default rates combine to determine loans that survive from year to year. Conditional rates of default and prepayment are determined separately. *See* section III.I.3., Multifamily Loan Performance.

[184] Multifamily loan data are too limited to allow an adjustment factor to be developed for those loans.

TABLE 8.—SINGLE FAMILY DEFAULT & PREPAYMENT VARIABLES

Variables for All Single Family Models	Single Family Default Variables	Single Family Prepayment Variables
Mortgage Age ...	X	X
Original LTV	X	X
Probability of Negative Equity	X	X
Burnout	X	X
Occupancy Status	X	X
Relative Spread		X
Yield Curve Slope		X
Relative Loan Size		X
Product Type (ARMs, Other Products only)	X	X
Payment Shock (ARMs only) ..	X	X
Initial Rate Effect (ARMs only)	X	X

• Mortgage Age—Patterns of mortgage default and prepayment have characteristic age profiles; defaults and prepayments increase during the first years following loan origination, with a peak between the fourth and seventh years.

• Original LTV—The LTV at the time of mortgage origination serves as a proxy for factors relating to the financial status of a borrower, which reflects the borrower's future ability to make loan payments. Higher original LTVs, which generally reflect fewer economic resources and greater financial risk, increase the probability of default and lower the probability of prepayment. The reverse is true for lower original LTVs.

• Probability of Negative Equity—Borrowers whose current loan balance is higher than the current value of their mortgaged property (reflecting negative borrower equity) are more likely to default than those with positive equity in their properties. The probability of negative borrower equity within a loan group is a function of (1) house price changes (based on the HPI) and amortization of loan principal, which together establish the average current LTV, and (2) the dispersion of actual house prices around the HPI value. Thus, even when the average current LTV for a loan group is less than one (positive equity), some percentage of the loans will have LTVs greater than one (negative equity).

• Burnout—This variable reflects whether a borrower has passed up earlier opportunities to refinance at favorable interest rates during the previous eight quarters. Such a borrower is less likely to prepay the current loan and refinance, and more likely to default in the future.

• Occupancy Status—This variable reflects the higher probability of default by investor-owners compared with that of owner-occupants. The RBC Report specifies the proportion of investor loans for each loan group.

• Relative Spread—The stress test uses the relative spread between the interest rate on a loan and the current market rate on loans as a proxy for the mortgage premium value, which reflects the value to a borrower of the option to prepay and refinance.

• Yield Curve Slope—This variable measures the relationship between short and long term interest rates. The shape of the yield curve, which reflects expectations for the future levels of interest rates, influences a borrower's decision to prepay a mortgage.

• Relative Loan Size—This variable reflects whether a loan is significantly larger or smaller than the State average. Generally, lower balance loans are less likely to refinance (and therefore prepay) because refinancing costs are proportionately larger, and the interest savings are proportionately smaller, than a larger balance loan.

• Product Type—The differences in performance between 30-year fixed-rate loans and other products, such as ARM and balloon loans, are captured by this variable.

• Payment Shock—This variable captures the effect of increasing or decreasing interest rates on the payments for ARMs. Although a borrower with an ARM loan may still have positive equity in the mortgaged property, the borrower may be unwilling or unable to make a larger monthly payment when interest rates increase, resulting in increases to ARM default and prepayment rates. Conversely, decreasing interest rates make it easier and more desirable for borrowers to make monthly payments, resulting in lower ARM default and prepayment rates.

• Initial Rate Effect—Borrowers with ARM loans with a ''teaser rate'' (an initial interest rate lower than the market rate) may experience payment shock, even if market rates do not rise, as the low teaser rate adjusts to the market rate over the first few years of the loan. The stress test includes a variable which captures this effect in the first three years of the life of the loan.

OFHEO considered using a number of other variables in both the default and prepayment equations that had been suggested by commenters or that appeared to explain default or prepayment rates, but found them inappropriate for the stress test for various reasons. Unemployment rates were suggested by several commenters as an appropriate variable, but, as explained in the preamble to NPR2, OFHEO chose not to make assumptions about macroeconomic factors, such as unemployment, that are not specified or required by statute. To use unemployment as a variable, OFHEO would have to create a model of unemployment rates or apply simpler assumptions about unemployment rates through the stress period. OFHEO is not convinced that adding this additional complexity would improve the rule's sensitivity to risk or otherwise enhance the rule. Further, the macroeconomic factors of the benchmark area and time period are captured implicitly to some extent by relating default and prepayment rates to the benchmark loss experience. Where, however, the 1992 Act required OFHEO to consider economic factors, such as house prices and interest rates, and OFHEO found those factors strongly correlated with mortgage performance, OFHEO incorporated them as variables in the models.

The season-of-the-year variable, originally found useful in estimating the single family default model, did not improve results when the model was reestimated for the final rule. Another variable, relative loan size, which was found significant and included in the model for prepayments, was determined not to have a significant impact on defaults.

OFHEO considered comments suggesting that the LTV variable should provide for further disaggregation of high LTV loans. OFHEO also considered comments recommending the creation of variables to account for the use of credit scoring and for subprime lending, structured mortgages (in which a second mortgage is created coincident with the first), assumable loans, and loans that were seasoned (as opposed to newly-originated) at acquisition. Although there is good reason to believe that these factors influence mortgage performance, OFHEO found the data and research insufficient to incorporate any of these factors into the stress test at this time. For example, OFHEO expects that automated credit scoring may result in lower default rates, but the lack of data regarding the impact of credit scoring during economic experiences equivalent to the benchmark loss experience makes it difficult to assess to what extent lower recent default rates observed on credit-scored mortgages would continue during such difficult times. As more data become available, OFHEO will explore the significance of these and other new variables and will continue to consider refinements to the variables that are included currently in the rule. Where appropriate, OFHEO will consider modifying the stress test to take them into account. OFHEO recognizes that to remain sensitive to risk, the stress test must constantly be reevaluated, updated, and refined to accommodate changes in the Enterprises' businesses and the state of the art in modeling and risk management. The research and analysis necessary to retain appropriate sensitivity to risk in the regulation is central to the mission of OFHEO.

(b) Respecification of ARM Model

OFHEO considered two general alternatives in the modeling of single family adjustable rate mortgages (ARMs). One possible approach was a simple model based upon fixed multiples of the 30-year fixed rate mortgage (FRM) performance. The other alternative required estimating a separate model for ARM performance. The fixed multiple approach, although simpler to apply and calculate, failed to take into account the very different default and prepayment patterns that apply to ARMs as compared to FRMs. In other words, it is inaccurate to assume that ARM prepayments and defaults will always be a fixed percentage higher or lower than on FRMs. Accordingly, OFHEO chose to develop a separate model of ARM performance that takes into account the variables, such as payment shock when rates adjust, that uniquely affect ARM performance.

In the final regulation, OFHEO reestimated and respecified the NPR2 ARM models using a pooled dataset of ARMs and 30-year FRMs in order to compensate for lack of computational detail in Enterprise data for ARM loans and to respond to comments about the insensitivity of the NPR2 ARM model to payment shock. This reestimation corrected an under-representation of ARM defaults and prepayments in the data on which the NPR2 model had been estimated. The respecified ARM model includes the same set of explanatory variables as the 30-year FRM model, along with three additional variables unique to ARMs. The additional variables account for differences in ARM performance relative to 30-year FRMs due to payment shock, initial (teaser) rate effects, and ARM product type (to capture other performance differences).

(xi) Multifamily Mortgage Performance

Modeling multifamily loans presented unique challenges for OFHEO, particularly in light of the lack of clear statutory guidance. When the 1992 Act was being considered by Congress, multifamily lending comprised a relatively small portion of the Enterprises' total business. In fact, Freddie Mac had discontinued multifamily lending altogether at that time. Consequently, no special provision was made for multifamily loans; the statute generally treated multifamily loans as just another type of single family loan. Through the 1990s, however, multifamily lending has grown in importance at both Enterprises and has become a key element in their strategies to meet affordable housing goals. What also became clear during that period is that multifamily loans perform very differently than single family loans. Default and prepayment behavior of commercial multifamily borrowers is affected by different factors than single family residential borrowers. Hence, models designed to simulate the performance of single family loans are not necessarily appropriate for multifamily loans and vice versa. Accordingly, OFHEO was required to build a stress test that complies with the requirements of the 1992 Act (which are oriented toward single family lending), but nevertheless includes a multifamily performance model that is sensitive to the risks associated with multifamily loans. OFHEO achieved this goal by basing the model on the same geographical region and time period used for the single family model, but exercising appropriate discretion to ensure that the stress level for multifamily loans is consistent with that for single family loans. OFHEO was particularly mindful of comments on NPR2 that highlighted inappropriately low loss rates for certain categories of multifamily loans, which would have had the effect of creating perverse business incentives for an Enterprise. The final rule is based upon a reestimated model that addresses these and other concerns raised by commenters, as further explained below.

(a) Multifamily Defaults

OFHEO considered many potential variables and combinations of variables in constructing the multifamily default model. Given the increasing importance of multifamily lending to the Enterprises, OFHEO sought to improve, where possible, upon previous models of multifamily loan loss behavior and has spent several years testing and evaluating the factors that affect losses on these loans. In this regard, OFHEO's proposed rule included the ''double trigger'' variable, which was designed to measure the likelihood that a particular loan was experiencing two important determinants of default, negative cash flow and negative equity, simultaneously. This variable was based upon the premise that a rational business person would be less likely to default on a loan so long as the property had either positive equity or positive cash flow. Although the underlying premise still appears sound, OFHEO found after further research, conducted in response to comments, that the proposed means of projecting multifamily property values during the stress period resulted in unrealistic volatility in property values and unreasonable loss projections for certain categories of loans. Accordingly, in the final rule, OFHEO has modified the multifamily default model to eliminate one of the ''triggers'' and uses current debt service coverage ratio or ''DCR,'' a measure of net cash flow, by itself as a variable. In addition, OFHEO has included a variable that adjusts for the increased probability of default when net cash flow is negative and a variable that reflects the direct relationship between LTV at loan origination and the subsequent likelihood of default. As explained in the preamble to the final rule, these three variables capture essentially the same mortgage performance factors that the double trigger was designed to capture, but avoided the difficulties of projecting multifamily property values over time.

OFHEO also recognized that additional variables were necessary to account for the fact that the Enterprises underwent major and permanent changes to their multifamily loan programs beginning in 1988 (Fannie Mae) and in 1993 (Freddie Mac). Freddie Mac, in particular, had losses so severe on early multifamily loans that it suspended its multifamily lending entirely until its programs could be completely overhauled. Fannie Mae's multifamily lending programs have undergone similar changes, but somewhat more gradually, since approximately 1988.

In NPR2, OFHEO employed two default models to distinguish between the Enterprises' loan programs—Negotiated Transactions (NT) and Cash. Further, a program restructuring variable captured the improved performance of multifamily cash loans after the changes in loan programs described above. Commenters on these models recommended that the two-model approach be dropped, because the distinction between the two categories of loans was too difficult to define and replicate. All commenters on the subject concurred that the underwriting and servicing practices of the Enterprises underwent major and permanent changes that should be reflected in the stress test. These comments came not only from the Enterprises, but also from multifamily seller-servicers, who were concerned that imposing inappropriately large marginal capital costs on multifamily loans would adversely affect seller-servicers, who should be given credit for the many improvements they had made in originating and servicing multifamily loans.

In response to the comments, OFHEO created a single multifamily default model that utilizes two variables to distinguish between multifamily loan programs. The first of these variables distinguishes loans based upon their date of origination, crediting loans originated under more recent programs at both Enterprises with lower default rates.[185] The second variable identifies a subset of the newer loans that were purchased under certain programs at the Enterprises that include more rigorous and conservative underwriting and servicing policies. These loans receive additional favorable default treatment. OFHEO believes that the revised variables accomplish the purpose of distinguishing the less risky loan programs and product types from other more risky loan programs and product types better than the variables used in NPR2. OFHEO further believes that these variables create appropriate capital incentives for the Enterprises to improve risk-management in all their multifamily lending programs.

(b) Multifamily Prepayments

OFHEO considered two alternative means to model multifamily loan prepayments. In NPR2, OFHEO proposed five statistical models of prepayments that were used for different types of multifamily loans. These models were similar in some respects to the prepayment model used for single family loans. None of the comments supported this approach and many were highly critical of it. Commenters pointed out that multifamily loans are very different from single family loans and that assumptions that are incorporated into single family loan models may be inappropriate for multifamily loans. Commenters also argued that the prepayment models were overly complex in the number and treatment of variables. The Enterprises both recommended that the final rule eliminate much of the complexity of the proposal in favor of using fixed prepayment percentages for each month of the stress test.

OFHEO considered these comments, studied the operation of the prepayment model and reviewed the current literature regarding prepayments. Given the limitations in relevant data, OFHEO concluded that the commenters were correct, that a statistical model would not provide greater precision or risk sensitivity than a fixed schedule of prepayments for each of the two interest rate scenarios. Accordingly, the final rule adopts such a schedule.[186]

(c) Multifamily Loss Severity

To determine appropriate multifamily loan loss severity rates, OFHEO considered a number of alternatives. In NPR2, OFHEO proposed six separate calculations for different categories of loans. In estimating these calculations, OFHEO utilized data from Freddie Mac's multifamily loans originated in the 1980s. While agreeing with the general methodology, some commenters argued that it was inappropriate to use these Freddie Mac data to estimate severity rates. They suggested that OFHEO add more recent severity data to the sample used to determine severity rates. In developing the final rule, OFHEO considered this alternative, but decided to continue using the Freddie Mac data from the 1980s to determine loss severity rates. OFHEO concluded that these data represented an appropriately stressful experience from which to extract severity rates. To the extent that later loan programs have experienced lower severity rates, data are inadequate to determine how much of the difference is due to improvement in loan programs and how much is due to differences in economic conditions. OFHEO also considered, as an alternative to the NPR2 approach, reducing the six severity calculations to a single equation. In the final rule, OFHEO implemented this alternative, because it simplified the stress test with no demonstrable loss of sensitivity to risk.

(xii) Counterparty Haircuts

In addition to mortgage credit quality, the stress test considers the creditworthiness of companies and financial instruments to which the Enterprises have credit exposure. These include most mortgage credit enhancement counterparties, securities held as assets, and derivative contract counterparties. The stress test gives credit only to investment grade counterparties.

For these contract or instrument counterparties, the stress test reduces—or applies ''haircuts'' to—the amounts due from these instruments or counterparties according to their level of risk.[187] The level of risk is determined by public credit ratings at the start of the stress test, classified into five categories: AAA, AA, A, BBB and unrated/below BBB. When no rating is available or the instrument or counterparty has a rating below BBB (below investment grade), the stress test applies a 100 percent haircut in the first month of the stress test, with the exception of unrated seller/servicers, which are treated as BBB. For other categories, the stress test phases in the haircuts monthly in equal increments until the total reduction listed in Table 9 is reached five years into the stress period. For the remainder of the stress test, the maximum haircut applies.

TABLE 9.—STRESS TEST FINAL HAIRCUTS BY CREDIT RATING CATEGORY

Ratings Classification	Derivative Contract Counterparties	Nonderivative Contract Counterparties or Instruments
AAA	2%	5%
AA	4%	15%
A	8%	20%
BBB	16%	40%
Unrated/Below BBB [1]	100%	100%

[1] Unrated, unsubordinated obligations issued by Government-sponsored enterprises other than the reporting Enterprise are treated as AAA. Unrated seller/servicers are treated as BBB. Other unrated counterparties and securities are subject to a 100% haircut applied in the first month of the stress test.

[185] Adjustable-rate loans and fixed-rate balloon loans exhibited improve performance, but less than fixed-rate fully amortizing loans. Therefore, different variables are used for these different loan types.

[186] In the up-rate scenario, the final rule includes no prepayments. In the down-rate scenario, the final rule applies a two percent annual prepayment rate to loans that are subject to prepayment penalty provisions and a 25 percent annual rate to loans that are not subject to these provisions or to loans after the provisions have expired.

[187] In the case of swaps, the stress test cancels a portion of ''in-the-money'' swaps based on the haircut amount.

OFHEO considered a number of alternatives to the haircuts in the final rule. NPR2 proposed a schedule of non-derivative haircuts that were approximately double those in the final rule, but were phased in over ten years rather than five.

In response to comments that those counterparty haircuts were too severe, OFHEO conducted extensive analysis of the historical data, including some updated rating agency data and studies submitted by commenters. As a result, haircuts were lowered. However, OFHEO determined that phasing the haircuts in more quickly would be more consistent with the probable impact on counterparties of stress test conditions. Also in response to comments regarding the proposed rule, OFHEO added a category that increased the haircuts on below-investment-grade and unrated counterparties. However, OFHEO decided to except unrated seller-servicers from this new category, continuing the NPR2 treatment of them as triple-B counterparties. OFHEO found this exception warranted because of (1) The seller-servicers' close and ongoing relationships with the Enterprises, (2) the types of controls available to the Enterprises under their seller-servicer contracts, and (3) factors other than lack of creditworthiness that may account for seller-servicers not having a rating, such as their small size. In the future, OFHEO will consider how Enterprise internal ratings can be used to make finer, but consistent, risk distinctions between such seller-servicers.

(xiii) New Debt

NPR2 specified that when the stress test resulted in a cash deficit requiring the issuance of new debt, all such debt would have a six-month maturity. OFHEO considered comments recommending a balance of long- and short-term debt to reflect better the rebalancing strategies that the Enterprises would be likely to follow. OFHEO agrees with the comments that a mix of long and short maturities may be more appropriate, but disagrees with those commenters who suggested that the stress test specify the issuance of primarily long-term debt as interest rates rise and short-term debt as they fall. OFHEO did not believe this approach would create a reasonable model of the reactions of the Enterprises to interest rate shocks, especially because the Enterprises do not manage their debt issuances in this manner. Moreover, it would have created interest rate hedges in both scenarios that were not appropriate. However, the Enterprises do generally manage the maturities in their debt portfolios to achieve a balance in the entire portfolio and OFHEO selected a similar approach to issuing new debt in the stress test. OFHEO constructed the stress test to add either long- or short-term debt as required to achieve and maintain a 50/50 balance of long- and short-term debt. The 50/50 balance was selected because it is more risk-neutral than the proposed approach, and because OFHEO will not try to model an Enterprise's internal predictions about whether interest rates will go up or down.

OFHEO also considered whether to change the short-term debt from a six-month maturity to a one-month maturity, as suggested by some commenters, but determined that a six-month rate is more representative of the mix of short-term maturities issued by the Enterprises. OFHEO also considered a commenter's suggestion to use a ten-year maturity for the long-term debt, but determined that a five-year callable bond was a more representative proxy for the typical mix of long-term Enterprise debt than ten-year bullet debt.

(xiv) Operating Expenses

The proposed decision rule for operating expenses was that these expenses would decline in proportion to the decline in the mortgage portfolio. Specifically, the operating expense for a given month was determined by multiplying the ratio of assets remaining at the end of each month to assets at the beginning of the stress test by one-third of the Enterprise's total operating expenses in the quarter immediately preceding the start of the stress test. No distinction was made between fixed and variable expenses. This treatment caused the expense reduction pattern for the up-rate scenario to differ from the down-rate scenario and within each scenario depending on the changes in the characteristics of an Enterprise's total mortgage portfolio.

The final rule reflects OFHEO's consideration of comments regarding the proposed rule, which linked operating expenses directly to the size of the mortgage portfolio, assumed all operating expenses were variable, did not exclude a portion of expenses associated with new business, and tied operating expenses to the previous quarter's operating expenses. The final rule modifies the proposal in only two respects. To recognize that operating expenses are partly fixed and partly variable, one third of each Enterprise's operating expenses at the start of the stress test remain fixed throughout the stress period, while the remainder declines in proportion to the decline in the mortgage portfolio. Secondly, a reduction of one third in the total of the fixed and variable components has been included to recognize that a cessation of new business would have a significant impact upon operating expenses. That reduction is phased in on a straight-line basis over the first 12 months of the stress period, because it would take an Enterprise at least that long to implement such a reduction. An impact of these changes is to reduce the differences in operating expenses between the up- and down-rate scenarios. OFHEO considered the Enterprises' recommendation that the stress test use a fixed expense ratio between 1.5 and 5.0 basis points of unpaid principal balance per year, but believed such a ratio would be unreasonably low, because, as one commenter noted, the ratio of Enterprise expenses to outstanding mortgage-backed securities and portfolio balances has averaged over 7.0 basis points for the past ten years. OFHEO also considered a commenter's recommendation to hold the level of expenses constant throughout the stress period based on the experience of financial institutions under stress. Although this argument has intuitive appeal for some types of financial institutions, adopting such an approach would have resulted in unreasonably high capital requirements relative to operating expenses in OFHEO's stress test. The approach in the final rule, which fixes only a portion of the expenses, seemed more appropriate for the Enterprises.

(xv) Distinction Between Preferred and Common Stock Dividends

The final rule adopts the proposed treatment of dividends, distinguishing between preferred stock and common stock by allowing the payment of preferred stock dividends as long as an Enterprise meets the minimum capital requirement, while terminating the payment of common stock dividends after the first year of the stress test. The payout rate (dividends as a percentage of earnings) is based on the trend in earnings. If earnings are increasing, the dividend payout rate is equal to the average of the payout rate of the preceding four quarters. If earnings are not increasing, the dividend payout is based on the preceding quarter's dollar amount of dividends per share. The final rule also modified the proposal to include repurchases of stock in the first two quarters of the stress period, based upon any such repurchases within the previous four quarters.

OFHEO considered and rejected a suggestion to lengthen the look-back period used to determine payout ratios from one to three years. OFHEO recognizes a shorter look-back period may add volatility in the capital requirement, but determined that relating the payout to the experience of the last four quarters is more appropriate because it is more reflective of current policies, because dividends are only paid for one year in the stress test, and because market considerations generally cause companies to be cautious in making changes to dividend policies. Relating dividend payouts to recent dividend payout experience is also more consistent with the need to provide a timely early warning of potential capital deficiencies. For similar reasons, OFHEO also rejected a proposal to use a long-term industry average dividend rate of approximately 25 percent of earnings. Also, a review of the Enterprises' payout ratios over a ten-year period revealed that such payouts would frequently not have been reflective of reality for each Enterprise.

(xvi) Capital Calculation

To calculate the amount of capital that an Enterprise would need just to maintain positive capital during the stress test, the final rule discounts the monthly capital balances back to the start date of the stress period and adjusts the starting capital by the lowest of the discounted capital balances. This approach converts future surpluses or deficits into current dollars. OFHEO also considered an approach that would use a series of iterative simulations to adjust the Enterprise's balance sheet until a starting level of capital was found that was just sufficient to maintain positive capital throughout the stress period. Either approach would ensure that an Enterprise would have enough capital to survive the stress test regardless of when losses associated with management and operations risk might occur, even if that were the first day of the stress period. OFHEO adopted the discounting approach because it is much simpler to design and replicate.

OFHEO rejected a recommendation by the Enterprises to assume that the amount of capital needed was the simple result of subtracting the maximum undiscounted amount of total capital consumed during the stress period from the starting position total capital. Such an approach is easier to implement, but it does not take into account the time value of money and would not ensure that the Enterprises hold capital sufficient to survive the stress test if management and operations losses occurred at any time during the ten-year stress period. Also, OFHEO believes that a present-value approach is preferable because it requires an Enterprise to create a greater capital cushion (as compared to the Enterprises' recommendation) when credit risk and interest rate risks are relatively low, making it more likely that an Enterprise can survive subsequent, more stressful periods.

5. Analysis of Relative Costs and Benefits

The 1992 Act presumptively determined that the benefit/cost ratio favors a detailed and complete stress test and risk-based capital regulation such as that in the final rule, and OFHEO has found no reason to question that judgment. The nation faces huge potential liabilities and economic disruption if the Enterprises are allowed to operate in an undercapitalized state, and all parties agree that a clear capital standard that is also sensitive to risk is an important tool for avoiding undercapitalization.

OFHEO has balanced the cost of capital or other forms of risk mitigation against the risk of loss in the Enterprises' operations and designed a risk-based capital rule that requires adequate capital or risk mitigation for activities that pose credit or interest rate risk, while not imposing inordinate costs on any area of the Enterprises' business. That is, the stress test reflects incremental capital charges associated with the Enterprises business activities that are consistent with risk. The stress test imposes higher capital costs on new activities and unusual activities for which the Enterprises lack adequate data about risks than on activities for which sufficient data is available to model them precisely. These higher costs help to insure that there is adequate capital for the risks that may be associated with the new or unusual activities and provide appropriate incentives for the Enterprises to maintain top quality data on all activities and to pay close attention to risk management. To the extent that requiring adequate capital may prevent certain innovations from being rushed to market before their risks are fully understood, OFHEO believes that result is appropriate.

In any event, OFHEO does not believe that the regulation will impede innovation and the timely introduction of new activities. The regulation provides a flexible and responsive procedure that has been designed to develop appropriate capital treatments as the Enterprises bring products to market. Moreover, when engaging in activities in which the financial risks are not fully understood, an Enterprise should hold capital (or utilize some type of risk mitigation) sufficient to cover the risks that might be associated with them. Prudent risk management under a voluntary system would require the same, and OFHEO's rule is designed to provide a regulatory incentive for prudent risk management. Further, even in the absence of a risk-based capital rule, OFHEO's safety and soundness examinations would require similarly conservative treatments of activities that pose risks that cannot be quantified accurately.

OFHEO has not performed more detailed analyses of the relative costs of a voluntary versus a mandatory system, because the 1992 Act does not make voluntary risk-based capital an option. However, if the Enterprises were to design and run the stress test internally, OFHEO's costs might be higher than otherwise, because of the need to monitor and examine two separate systems. Therefore, OFHEO views the net difference in cost between a voluntary versus a mandatory risk-based capital system as likely to be *de minimus.*

B. Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant Federalism implications. "Policies that have Federalism implications" are defined as regulations or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities between the various levels of government. The agency certifies that this rule has no such Federalism implications.

C. Executive Order 12988, Civil Justice Reform

Executive Order 12988 sets forth guidelines to promote the just and efficient resolution of civil claims and to reduce the risk of litigation to the government. The rule meets the applicable standards of sections 3(a) and (b) of Executive Order 12988.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities must include a regulatory flexibility analysis describing the rule's impact on small entities. Such an analysis need not be undertaken if the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

OFHEO has considered the impacts of the risk-based capital regulation under the Regulatory Flexibility Act. The regulation does not have a significant effect on a substantial number of small entities since it is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act. Therefore, the General Counsel of OFHEO, acting under delegated authority, has certified that the regulation will not have a significant economic impact on a substantial number of small entities.

Although not expressly referencing the Regulatory Flexibility Act, a trade association representing credit unions requested that OFHEO address the regulation's impact on its members. OFHEO has determined that such an analysis is not required. The Regulatory Flexibility Act requires such an analysis only for entities the agency has direct statutory authority to regulate. In this case, OFHEO only has direct authority to regulate the Enterprises.

E. Paperwork Reduction Act

The risk-based capital rule contains no information collection requirements that require OMB approval under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This final rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 12 CFR Part 1750

Capital classification, Mortgages, Risk-based capital.

Accordingly, for reasons set forth in the preamble, the Office of Federal Housing Enterprise Oversight amends 12 CFR part 1750 as follows:

PART 1750—CAPITAL

1. The authority citation for part 1750 is revised to read as follows:

Authority: 12 U.S.C. 4513, 4514, 4611, 4612, 4614, 4615, 4618.

2. Add new subpart B to part 1750 to read as follows:

Subpart B—Risk-Based Capital

Sec.
1750.10 General.
1750.11 Definitions.
1750.12 Procedures and timing.
1750.13 Risk-based capital level computation.
Appendix A to subpart B of part 1750—Risk-Based Capital Test Methodology and Specifications

Subpart B—Risk-Based Capital

§ 1750.10 General.

The regulation contained in this subpart B establishes the methodology for computing the risk-based capital level for each Enterprise. The board of directors of each Enterprise is responsible for ensuring that the Enterprise maintains total capital at a level that is sufficient to ensure the continued financial viability of the Enterprise and is equal to or exceeds the risk-based capital level computed pursuant to this subpart B.

§ 1750.11 Definitions.

Except where a term is explicitly defined differently in this subpart, all terms defined at § 1750.2 of subpart A of this part shall have the same meanings for purposes of this subpart. For purposes of subpart B of this part, the following definitions shall apply:

(a) *Benchmark loss experience* means the rates of default and severity for mortgage loans that—

(1) Were originated during a period of two or more consecutive calendar years in contiguous areas that together contain at least five percent of the population of the United States, and

(2) Experienced the highest loss rate for any period of such duration in comparison with the loans originated in any other contiguous areas that together contain at least five percent of the population of the United States.

(b) *Constant maturity Treasury yield* means the constant maturity Treasury yield, published by the Board of Governors of the Federal Reserve System.

(c) *Contiguous areas* means all the areas within a state or a group of two or more states sharing common borders. ''Sharing common borders'' does not mean meeting at a single point. Colorado, for example, is contiguous with New Mexico, but not with Arizona.

(d) *Credit risk* means the risk of financial loss to an Enterprise from nonperformance by borrowers or other obligors on instruments in which an Enterprise has a financial interest, or as to which the Enterprise has a financial obligation.

(e) *Default rate* of a given group of loans means the ratio of the aggregate original principal balance of the defaulted loans in the group to the aggregate original principal balance of all loans in the group.

(f) *Defaulted loan* means a loan that, within ten years following its origination:

(1) Resulted in pre-foreclosure sale,

(2) Completed foreclosure,

(3) Resulted in the acquisition of real estate collateral, or

(4) Otherwise resulted in a credit loss to an Enterprise.

(g) *Financing costs* of property acquired through foreclosure means the product of:

(1) The number of years (including fractions) of the period from the completion of foreclosure through disposition of the property,

(2) The average of the Enterprises' short-term funding rates, and

(3) The unpaid principal balance at the time of foreclosure.

(h) *Interest rate risk* means the risk of financial loss due to the sensitivity of earnings and net worth of an Enterprise to changes in interest rates.

(i) *Loss* on a defaulted loan means:

(1) With respect to a loan in category 1, 2, or 3 of the definition of defaulted loan the difference between:

(i) The sum of the principal and interest owed when the borrower lost title to the property securing the mortgage; financing costs through the date of property disposition; and cash expenses incurred during the foreclosure process, the holding period for real estate collateral acquired as a result of default, and the property liquidation process; and

(ii) The sum of the property sales price and any other liquidation proceeds (except those resulting from private mortgage insurance proceeds or other third-party credit enhancements).

(2) With respect to defaulted loans not in categories 1, 2, or 3, the amount of the financial loss to the Enterprise.

(j) *Mortgage* means any loan secured by such classes of liens as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located; or a manufactured house that is personal property under the laws of the State in which the manufactured house is located, together with the credit instruments, if any, secured thereby, and includes interests in mortgages.

(k) *Seasoning* means the change over time in the ratio of the unpaid principal balance of a mortgage to the value of the property by which such mortgage loan is secured.

(l) *Severity rate* for any group of defaulted loans means the aggregate losses on all loans in that group divided by the aggregate original principal balances of those loans.

(m) *Stress period* means a hypothetical ten-year period immediately following the day for which capital is being measured, which is a period marked by the severely adverse economic circumstances defined in 12 CFR 1750.13 and Appendix A to this subpart.

(n) *Total capital* means, with respect to an Enterprise, the sum of the following:

(1) The core capital of the Enterprise;

(2) A general allowance for foreclosure losses, which—

(i) Shall include an allowance for portfolio mortgage losses, an allowance for non-reimbursable foreclosure costs on government claims, and an allowance for liabilities reflected on the balance sheet for the Enterprise for estimated foreclosure losses on mortgage-backed securities; and

(ii) Shall not include any reserves of the Enterprise made or held against specific assets.

(3) Any other amounts from sources of funds available to absorb losses incurred by the Enterprise, that the Director by regulation determines are appropriate to include in determining total capital.

(o) *Type of mortgage product* means a classification of one or more mortgage products, as established by the Director, that have similar characteristics from each set of characteristics under the paragraphs (o)(1) through (o)(7) of this section:

(1) The property securing the mortgage is—

(i) A residential property consisting of 1 to 4 dwelling units; or

(ii) A residential property consisting of more than 4 dwelling units.

(2) The interest rate on the mortgage is—-

(i) Fixed; or

(ii) Adjustable.

(3) The priority of the lien securing the mortgage is—

(i) First; or

(ii) Second or other.

(4) The term of the mortgage is—

(i) 1 to 15 years;

(ii) 16–30 years; or

(iii) More than 30 years.

(5) The owner of the property is—

(i) An owner-occupant; or

(ii) An investor.

(6) The unpaid principal balance of the mortgage—

(i) Will amortize completely over the term of the mortgage, and will not increase significantly at any time during the term of the mortgage;

(ii) Will not amortize completely over the term of the mortgage, and will not increase significantly at any time during the term of the mortgage; or

(iii) May increase significantly at some time during the term of the mortgage.

(7) Any other characteristics of the mortgage, as specified in Appendix A to this subpart.

§ 1750.12 Procedures and timing.

(a) Each Enterprise shall file with the Director a Risk-Based Capital Report each quarter, and at such other times as the Director may require, in his or her discretion. The report shall contain the information required by the Director in the instructions to the Risk-Based Capital Report in the format or media specified therein and such other information as may be required by the Director.

(b) The quarterly Risk-Based Capital Report shall contain information for the last day of the quarter and shall be submitted not later than 30 days after the end of the quarter. Reports required by the Director other than quarterly reports shall be submitted within such time period as the Director shall specify.

(c) When an Enterprise contemplates entering into a new activity, as that term is defined in section 3.11 of Appendix A to this subpart, the Enterprise shall notify the Director as soon as possible while the transaction or activity is under consideration, but in no event later than 5 calendar days after settlement or closing. The Enterprise shall provide to the Director such information regarding the activity as the Director may require to determine a stress test treatment. OFHEO will inform the Enterprise as soon as possible thereafter of the proposed stress test treatment of the new activity. In addition, the notice of proposed capital classification required by § 1750.21 of subpart C of this part will inform the Enterprise of the capital treatment of such new activity used in the determination of the risk-based capital requirement.

(d) If an Enterprise discovers that a Risk-Based Capital Report previously filed with OFHEO contains any errors or omissions, the Enterprise shall notify OFHEO immediately of such discovery and file an amended Risk-Based Capital Report not later than three days thereafter.

(e) Each capital classification shall be determined by OFHEO on the basis of the Risk-Based Capital Report filed by the Enterprise under paragraph (a) of this section; provided that, in the event an amended Risk-Based Capital Report is filed prior to the issuance of the final notice of capital classification, the Director has the discretion to determine the Enterprise's capital classification on the basis of the amended report.

(f) Each Risk-Based Capital Report or any amended Risk-Based Capital Report shall contain a declaration by the officer who has been designated by the Board as responsible for overseeing the capital adequacy of the Enterprise that the report is true and correct to the best of such officer's knowledge and belief.

§ 1750.13 Risk-based capital level computation.

(a) *Risk-Based Capital Test*—OFHEO shall compute a risk-based capital level for each Enterprise at least quarterly by applying the risk-based capital test described in Appendix A to this subpart to determine the amount of total capital required for each Enterprise to maintain positive capital during the stress period. In making this determination, the Director shall take into account any appropriate distinctions among types of mortgage products, differences in seasoning of mortgages, and other factors determined appropriate by the Director in accordance with the methodology specified in Appendix A to this subpart. The stress period has the following characteristics:

(1) *Credit risk*—With respect to mortgages owned or guaranteed by the Enterprise and other obligations of the Enterprise, losses occur throughout the United States at a rate of default and severity reasonably related, in accordance with Appendix A to this subpart, to the benchmark loss experience.

(2) *Interest rate risk*—(i) *In general*. Interest rates decrease as described in paragraph (a)(2)(ii) of this section or increase as described in paragraph (a)(2)(iii) of this section, whichever would require more capital in the stress test for the Enterprise. Appendix A to this subpart contains a description of the methodology applied to implement the interest rate scenarios described in paragraphs (a)(2)(ii) and (iii) of this section.

(ii) *Decreases*. The 10-year constant maturity Treasury yield decreases during the first year of the stress period and remains at the new level for the remainder of the stress period. The yield decreases to the lesser of-(A) 600 basis points below the average yield during the 9 months immediately preceding the stress period, or

(B) 60 percent of the average yield during the 3 years immediately preceding the stress period, but in no case to a yield less than 50 percent of the average yield during the 9 months immediately preceding the stress period.

(iii) *Increases*. The 10-year constant maturity Treasury yield increases during the first year of the stress period and will remain at the new level for the remainder of the stress period. The yield increases to the greater of—

(A) 600 basis points above the average yield during the 9 months immediately preceding the stress period, or

(B) 160 percent of the average yield during the 3 years immediately preceding the stress period, but in no case to a yield greater than 175 percent of the average yield during the 9 months immediately preceding the stress period.

(iv) *Different terms to maturity.* Yields of Treasury instruments with terms to maturity other than 10 years will change relative to the 10-year constant maturity Treasury yield in patterns and for durations that are reasonably related to historical experience and are judged reasonable by the Director. The methodology used by the Director to adjust the yields of those other instruments is specified in Appendix A to this subpart.

(v) *Large increases in yields.* If the 10-year constant maturity Treasury yield is assumed to increase by more than 50 percent over the average yield during the 9 months immediately preceding the stress period, the Director shall adjust the losses resulting from the conditions specified in paragraph (a)(2)(iii) of this section to reflect a correspondingly higher rate of general price inflation. The method of such adjustment by the Director is specified in Appendix A to this subpart.

(3) *New business.* Any contractual commitments of the Enterprise to purchase mortgages or issue securities will be fulfilled. The characteristics of resulting mortgages purchased, securities issued, and other financing will be consistent with the contractual terms of such commitments, recent experience, and the economic characteristics of the stress period, as more fully specified in Appendix A to this subpart. No other purchases of mortgages shall be assumed.

(4) *Other activities.* Losses or gains on other activities, including interest rate and foreign exchange hedging activities, shall be determined by the Director, in accordance with Appendix A to this subpart and on the basis of available information, to be consistent with the stress period.

(5) *Consistency.* Characteristics of the stress period other than those specifically set forth in paragraph (a) of this section, such as prepayment experience and dividend policies, will be determined by the Director, in accordance with Appendix A to this subpart, on the basis of available information, to be most consistent with the stress period.

(b) *Risk-Based Capital Level.* The risk-based capital level of an Enterprise, to be used in determining the appropriate capital classification of each Enterprise, as required by section 1364 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4614), shall be equal to the sum of the following amounts:

(1) *Credit and Interest Rate Risk.* The amount of total capital determined by applying the risk-based capital test under paragraph (a) of this section to the Enterprise.

(2) *Management and Operations Risk.* To provide for management and operations risk, 30 percent of the amount of total capital determined by applying the risk-based capital test under paragraph (a) of this section to the Enterprise.

Appendix A to Subpart B of Part 1750—Risk-Based Capital Test Methodology and Specifications

1.0 Identification of the Benchmark Loss Experience
1.1 Definitions
1.2 Data
1.3 Procedures
2.0 Identification of a New Benchmark Loss Experience
3.0 Computation of the Risk-Based Capital Requirement
3.1 Data
3.1.1 Introduction
3.1.2 Risk-Based Capital Report
3.1.2.1 Whole Loan Inputs
3.1.2.2 Mortgage Related Securities Inputs
3.1.2.3 Nonmortgage Instrument Cash Flows Inputs
3.1.2.4 Inputs for Alternative Modeling Treatment Items
3.1.2.5 Operations, Taxes, and Accounting Inputs
3.1.3 Public Data
3.1.3.1 Interest Rates
3.1.3.2 Property Valuation Inputs
3.1.4 Constant Values
3.1.4.1 Single Family Loan Performance
3.1.4.2 Multifamily Loan Performance
3.2 Commitments
3.2.1 Commitments Overview
3.2.2 Commitments Inputs
3.2.2.1 Loan Data
3.2.2.2 Interest Rate Data
3.2.3 Commitments Procedures
3.2.4 Commitments Outputs
3.3 Interest Rates
3.3.1 Interest Rates Overview
3.3.2 Interest Rates Inputs
3.3.3 Interest Rates Procedures
3.3.4 Interest Rates Outputs
3.4 Property Valuation
3.4.1 Property Valuation Overview
3.4.2 Property Valuation Inputs
3.4.3 Property Valuation Procedures for Inflation Adjustment
3.4.4 Property Valuation Outputs
3.5 Counterparty Defaults
3.5.1 Counterparty Defaults Overview
3.5.2 Counterparty Defaults Input
3.5.3 Counterparty Defaults Procedures
3.5.4 Counterparty Defaults Outputs
3.6 Whole Loan Cash Flows
3.6.1 Whole Loan Cash Flows Overview
3.6.2 Whole Loan Cash Flows Inputs
3.6.3 Whole Loan Cash Flows Procedures
3.6.3.1 Timing Conventions
3.6.3.2 Payment Allocation Conventions
3.6.3.3 Mortgage Amortization Schedule
3.6.3.4 Single Family Default and Prepayment Rates
3.6.3.5 Multifamily Default and Prepayment Rates
3.6.3.6 Calculation of Single Family and Multifamily Mortgage Losses
3.6.3.7 Stress Test Whole Loan Cash Flows
3.6.3.8 Whole Loan Accounting Flows
3.6.4 Final Whole Loan Cash Flow Outputs
3.7 Mortgage-Related Securities Cash Flows
3.7.1 Mortgage-Related Securities Overview
3.7.2 Mortgage-Related Securities Inputs
3.7.2.1 Inputs Specifying Individual Securities
3.7.2.2 Interest Rate Inputs
3.7.2.3 Mortgage Performance Inputs
3.7.2.4 Third-Party Credit Inputs
3.7.3 Mortgage-Related Securities Procedures
3.7.3.1 Single Class MBSs
3.7.3.2 REMICs and Strips
3.7.3.3 Mortgage Revenue Bonds and Miscellaneous MRS
3.7.3.4 Accounting
3.7.4 Mortgage-Related Securities Outputs
3.8 Nonmortgage Instrument Cash Flows
3.8.1 Nonmortgage Instrument Overview
3.8.2 Nonmortgage Instrument Inputs
3.8.3 Nonmortgage Instrument Procedures
3.8.3.1 Apply Specific Calculation Simplifications
3.8.3.2 Determine the Timing of Cash Flows
3.8.3.3 Obtain the Principal Factor Amount at Each Payment Date
3.8.3.4 Calculate the Coupon Factor
3.8.3.5 Project Principal Cash Flows or Changes in the Notional Amount
3.8.3.6 Project Interest and Dividend Cash Flows
3.8.3.7 Apply Call, Put, or Cancellation Features, if Applicable
3.8.3.8 Calculate Monthly Interest Accruals for the Life of the Instrument
3.8.3.9 Calulate Monthly Amotization (Accretion) of Premiums (Discounts) and Fees
3.8.3.10 Apply Counterparty Haircuts
3.8.4 Nonmortgage Instrument Outputs
3.9 Alternative Modeling Treatments
3.9.1 Alternative Modeling Treatments Overview
3.9.2 Alternative Modeling Treatments Inputs
3.9.3 Alternative Modeling Treatments Procedures
3.9.3.1 Off-Balance Sheet Items
3.9.3.2 Reconciling Items
3.9.3.3 Balance Sheet Items
3.9.4 Alternative Modeling Treatments Outputs
3.10 Operations, Taxes, and Accounting

3.10.1 Operations, Taxes, and Accounting Overview
3.10.2 Operations, Taxes, and Accounting Inputs
3.10.3 Operations, Taxes, and Accounting Procedures
3.10.3.1 New Debt and Investments
3.10.3.2 Dividends and Share Repurchases
3.10.3.3 Allowances for Loan Losses and Other Charge-Offs
3.10.3.4 Operating Expenses
3.10.3.5 Income Taxes
3.10.3.6 Accounting
3.10.4 Operations, Taxes, and Accounting Outputs
3.11 Treatment of New Enterprise Activities
3.11.1 New Enterprise Activities Overview
3.11.2 New Enterprise Activities Inputs
3.11.3 New Enterprise Activities Procedures
3.11.4 New Enterprise Activities Outputs
3.12 Calculation of the Risk-Based Capital Requirement
3.12.1 Risk-Based Capital Requirement Overview
3.12.2 Risk-Based Capital Requirement Inputs
3.12.3 Risk-Based Capital Requirement Procedures
3.12.4 Risk-Based Capital Requirement Output
4.0 Glossary

1.0 Identification of the Benchmark Loss Experience

OFHEO will use the definitions, data, and methodology described below to identify the Benchmark Loss Experience.

1.1 Definitions

The terms defined in the Glossary to this Appendix shall apply for this Appendix.

1.2 Data

[a] OFHEO identifies the Benchmark Loss Experience (BLE) using historical loan-level data required to be submitted by each of the two Enterprises. OFHEO's analysis is based entirely on the data available through 1995 on conventional, 30-year, fixed-rate loans secured by first liens on single-unit, owner-occupied, detached properties. For this purpose, detached properties are defined as single family properties excluding condominiums, planned urban developments, and cooperatives. The data includes only loans that were purchased by an Enterprise within 12 months after loan origination and loans for which the Enterprise has no recourse to the lender.

[b] OFHEO organizes the data from each Enterprise to create two substantially consistent data sets. OFHEO separately analyzes default and severity data from each Enterprise. Default rates are calculated from loan records meeting the criteria specified above. Severity rates are calculated from the subset of defaulted loans for which loss data are available.

1.3 Procedures

[a] Cumulative ten-year default rates for each combination of states and origination years (state/year combination) that OFHEO examines are calculated for each Enterprise by grouping all of the Enterprise's loans originated in that combination of states and years. For origination years with less than ten-years of loss experience, cumulative-to-date default rates are used. The two Enterprise default rates are averaged, yielding an ''average default rate'' for that state/year combination.

[b] An ''average severity rate'' for each state/year combination is determined in the same manner as the average default rate. For each Enterprise, the aggregate severity rate is calculated for all loans in the relevant state/year combination and the two Enterprise severity rates are averaged.

[c] The ''loss rate'' for any state/year combination examined is calculated by multiplying the average default rate for that state/year combination by the average severity rate for that combination.

[d] The rates of default and Loss Severity of loans in the state/year combination containing at least two consecutive origination years and contiguous areas with a total population equal to or greater than five percent of the population of the United States with the highest loss rate constitutes the Benchmark Loss Experience.

2.0 Identification of a New Benchmark Loss Experience

OFHEO will periodically monitor available data and reevaluate the Benchmark Loss Experience using the methodology set forth in this Appendix. Using this methodology, OFHEO may identify a new Benchmark Loss Experience that has a higher rate of loss than the Benchmark Loss Experience identified at the time of the issuance of this regulation. In the event such a Benchmark Loss Experience is identified, OFHEO may incorporate the resulting higher loss rates in the Stress Test.

3.0 Computation of the Risk-Based Capital Requirement

3.1 Data

3.1.1 Introduction

[a] The Stress Test requires data on all of an Enterprise's assets, liabilities, stockholders equity, accounting entries, operations and off-balance sheet obligations, as well as economic factors that affect them: interest rates, house prices, rent growth rates, and vacancy rates. The Enterprises are responsible for compiling and aggregating data on at least a quarterly basis into a standard format called the Risk-Based Capital Report (RBC Report). Each Enterprise is required to certify that the RBC Report submission is complete and accurate. Data on economic factors, such as interest rates, are compiled from public sources. The Stress Test uses proprietary and public data directly, and also uses values derived from such data in the form of constants or default values. (See Table 3–1, Sources of Stress Test Input Data.) Data fields from each of these sources for Stress Test computations are described in the following tables and in each section of this Appendix.

[b] The RBC Report includes information for all the loans owned or guaranteed by an Enterprise, as well as securities and derivative contracts, the dollar balances of these instruments and obligations, as well as all characteristics that bear on their behavior under stress conditions. As detailed in the RBC Report, data are required for all the following categories of instruments and obligations:

- Mortgages owned by or underlying mortgage-backed securities (MBS) issued by the Enterprises (whole loans)
- Mortgage-related securities
- Nonmortgage related securities, whether issued by an Enterprise, (e.g., debt) or held as investments
- Derivative contracts
- Other off-balance sheet guarantees (e.g., guarantees of private-issue securities).

TABLE 3–1—SOURCES OF STRESS TEST INPUT DATA

Section of this Appendix	Table	Data Source(s) R = RBC Report P = Public Data F = Fixed Values			
		R	P	F	Intermediate Outputs
3.1.3, Public Data	3–19, Stress Test Single Family Quarterly House Price Growth Rates			F	
	3–20, Multifamily Monthly Rent Growth and Vacancy Rates			F	
3.2.2, Commitments Inputs	Characteristics of securitized single family loans originated and delivered within 6 months prior to the Start of the Stress Test	R			3.3.4, Interest Rates Outputs
3.2.3, Commitments Procedures	3–25, Monthly Deliveries as a Percentage of Commitments Outstanding (MDP)			F	

TABLE 3–1—SOURCES OF STRESS TEST INPUT DATA—Continued

Section of this Appendix	Table	Data Source(s) R = RBC Report P = Public Data F = Fixed Values R	P	F	Intermediate Outputs
3.3.2, Interest Rates Inputs	3–18, Interest Rate and Index Inputs		P		
3.3.3, Interest Rates Procedures	3–26, CMT Ratios to the Ten-Year CMT			F	
3.4.2, Property Valuation Inputs	3–28, Property Valuation Inputs				3.1.3, Public Data 3.3.4, Interest Rates Outputs
3.5.3, Counterparty Defaults Procedures	3–30, Rating Agencies Mappings to OFHEO Ratings Categories		P		
	3–31, Stress Test Maximum Haircut by Ratings Classification			F	
3.6.3.3.2, Mortgage Amortization Schedule Inputs	3–32, Loan Group Inputs for Mortgage Amortization Calculation				3.3.4, Interest Rates Outputs
3.6.3.4.2, Single Family Default and Prepayment Inputs	3–34, Single Family Default and Prepayment Inputs	R		F	3.6.3.3.4, Mortgage Amortization Schedule Outputs
3.6.3.4.3.2, Prepayment and Default Rates and Performance Fractions	3–35, Coefficients for Single Family Default and Prepayment Explanatory Variables			F	
3.6.3.5.2, Multifamily Default and Prepayment Inputs	3–38, Loan Group Inputs for Multifamily Default and Prepayment Calculations	R		F	
3.6.3.5.3.2, Default and Prepayment Rates and Performance Fractions	3–39, Explanatory Variable Coefficients for Multifamily Default			F	3.6.3.3.4, Mortgage Amortization Schedule Outputs
3.6.3.6.2.2, Single Family Gross Loss Severity Inputs	3–42, Loan Group Inputs for Gross Loss Severity			F	3.3.4, Interest Rates Outputs 3.6.3.3.4, Mortgage Amortization Schedule Outputs 3.6.3.4.4, Single Family Default and Prepayment Outputs
3.6.3.6.3.2, Multifamily Gross Loss Severity Inputs	3–44, Loan Group Inputs for Multifamily Gross Loss Severity			F	3.3.4, Interest Rates Outputs 3.6.3.3.4, Mortgage Amortization Schedule Outputs
3.6.3.6.4.2, Mortgage Credit Enhancement Inputs	3–10, CE Inputs for each Loan Group	R			3.6.3.3.4, Mortgage Amortization Schedule Outputs 3.6.3.4.4, Single Family Default and Prepayment Outputs 3.6.3.5.4, Multifamily Default and Prepayment Outputs 3.6.3.6.2.4, Single Family Gross Loss Severity Outputs 3.6.3.6.3.4, Multifamily Gross Loss Severity Outputs
	3–47, Inputs for each Distinct CE Combination (DCC)	R			
3.6.3.7.2, Stress Test Whole Loan Cash Flow Inputs	3–51, Inputs for Final Calculation of Stress Test Whole Loan Cash Flows	R			3.3.4, Interest Rates Outputs 3.6.3.3.4, Mortgage Amortization Schedule Outputs 3.6.3.4.4, Single Family Default and Prepayment Outputs 3.6.3.5.4, Multifamily Default and Prepayment Outputs 3.6.3.6.5.2, Single Family and Multifamily Net Loss Severity Outputs
3.6.3.8.2, Whole Loan Accounting Flows Inputs	3–54, Inputs for Whole Loan Accounting Flows	R			3.6.3.7.4, Stress Test Whole Loan Cash Flow Outputs
3.7.2, Mortgage-Related Securities Inputs	3–56, RBC Report Inputs for Single Class MBS Cash Flows	R			
	3–57, RBC Report Inputs for Multi-Class and Derivative MBS Cash Flows	R			
	3–58, RBC Report Inputs for MRBs and Derivative MBS Cash Flows	R			
3.8.2, Nonmortgage Instrument Inputs	3–65, Input Variables for Nonmortgage Instrument Cash flows	R			

TABLE 3–1—SOURCES OF STRESS TEST INPUT DATA—Continued

Section of this Appendix	Table	Data Source(s) R = RBC Report P = Public Data F = Fixed Values			
		R	P	F	Intermediate Outputs
3.9.2, Alternative Modeling Treatments Inputs	3–69, Alternative Modeling Treatment Inputs	R			
3.10.2, Operations, Taxes, and Accounting Inputs	3–70, Operations, Taxes, and Accounting Inputs	R			3.3.4, Interest Rates Outputs 3.6.3.7.4, Stress Test Whole Loan Cash Flow Outputs 3.7.4, Mortgage-Related Securities Outputs 3.8.4, Nonmortgage Instrument Outputs
3.12.2, Risk-Based Capital Requirement Inputs	....	R			3.3.4, Interest Rates Outputs 3.9.4, Alternative Modeling Treatments Outputs 3.10.4, Operations, Taxes, and Accounting Outputs

3.1.2 Risk-Based Capital Report

The Risk-Based Capital Report is comprised of information on whole loans, mortgage-related securities, nonmortgage instruments (including liabilities and derivatives), and accounting items (including off-balance sheet guarantees). In addition to their reported data, the Enterprises may report scale factors in order to reconcile this reported data with their published financials (*see* section 3.10.2[b] of this Appendix). If so, specific data items, as indicated, are adjusted by appropriate scale factors before any calculations occur.

3.1.2.1 Whole Loan Inputs

[a] Whole loans are individual single family or multifamily mortgage loans. The Stress Test distinguishes between whole loans that the Enterprises hold in their investment portfolios (retained loans) and those that underlie mortgage-backed securities (sold loans). Consistent with Table 3–2, Whole Loan Classification Variables, each Enterprise aggregates the data for loans with similar portfolio (retained or sold), risk, and product characteristics. The characteristics of these loan groups determine rates of mortgage Default, Prepayment and Loss Severity and cash flows.

[b] The characteristics that are the basis for loan groups are called "classification variables" and reflect categories, e.g., fixed interest rate versus floating interest rate, or identify a value range, e.g., original loan-to-value (LTV) ratio greater than 80 percent and less than or equal to 90 percent.

[c] All loans with the same values for each of the relevant classification variables included in 3–2 (and where applicable 3–3 and 3–4) comprise a single loan group. For example, one loan group includes all loans with the following characteristics:

- Single family
- Sold portfolio
- 30-year fixed rate conventional loan
- Mortgage age greater than or equal to 36 months and less than 48 months
- Original LTV greater than 75 percent and less than or equal to 80 percent
- Current mortgage interest rate class greater than or equal to six percent and less than seven percent
- Secured by property located in the East North Central Census Division
- Relative loan size greater than or equal to 75 percent and less than 100 percent of the average for its state and origination year.

TABLE 3–2—WHOLE LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Reporting Date	The last day of the quarter for the loan group activity that is being reported to OFHEO	YYYY0331 YYYY0630 YYYY0930 YYYY1231
Enterprise	Enterprise submitting the loan group data	Fannie Mae Freddie Mac
Business Type	Single family or multifamily	Single family Multifamily
Portfolio Type	Retained portfolio or Sold portfolio	Retained Portfolio Sold Portfolio
Government Flag	Conventional or Government insured loan	Conventional Government
Original LTV	Assigned LTV classes based on the ratio, in percent, between the original loan amount and the lesser of the purchase price or appraised value	LTV<=60 60 <LTV<=70 70 <LTV<=75 75 <LTV<=80 80 <LTV<=90 90 <LTV<=95 95 <LTV<=100 100 <LTV
Current Mortgage Interest Rate	Assigned classes for the current mortgage interest rate	0.0<=Rate<4.0 4.0<=Rate<5.0

TABLE 3–2—WHOLE LOAN CLASSIFICATION VARIABLES—Continued

Variable	Description	Range
		5.0<=Rate<6.0 6.0<=Rate<7.0 7.0<=Rate<8.0 8.0<=Rate<9.0 9.0<=Rate<10.0 10.0<=Rate<11.0 11.0<=Rate<12.0 12.0<=Rate<13.0 13.0<=Rate<14.0 14.0<=Rate<15.0 15.0<=Rate<16.0 Rate=>16.0
Original Mortgage Interest Rate	Assigned classes for the original mortgage interest rate	0.0<=Rate<4.0 4.0<=Rate<5.0 5.0<=Rate<6.0 6.0<=Rate<7.0 7.0<=Rate<8.0 8.0<=Rate<9.0 9.0<=Rate<10.0 10.0<=Rate<11.0 11.0<=Rate<12.0 12.0<=Rate<13.0 13.0<=Rate<14.0 14.0<=Rate<15.0 15.0<=Rate<16.0 Rate=>16.0
Mortgage Age	Assigned classes for the age of the loan	0<=Age<12 12<=Age<24 24<=Age<36 36<=Age<48 48<=Age<60 60<=Age<72 72<=Age<84 84<=Age<96 96<=Age<108 108<=Age<120 120<=Age<132 132<=Age<144 144<=Age<156 156<=Age<168 168<=Age<180 Age>=180
Rate Reset Period	Assigned classes for the number of months between rate adjustments	Period =1 1< Period <=4 4< Period <=9 9< Period <=15 15< Period <=60 Period >60
Payment Reset Period	Assigned classes for the number of months between payment adjustments after the duration of the teaser rate	Period <=9 9< Period <=15 Period >15
ARM Index	Specifies the type of index used to determine the interest rate at each adjustment	FHLB 11th District Cost of Funds. 1 Month Federal Agency Cost of Funds. 3 Month Federal Agency Cost of Funds. 6 Month Federal Agency Cost of Funds. 12 Month Federal Agency Cost of Funds. 24 Month Federal Agency Cost of Funds. 36 Month Federal Agency Cost of Funds. 60 Month Federal Agency Cost of Funds. 120 Month Federal Agency Cost of Funds. 360 Month Federal Agency Cost of Funds. Overnight Federal Funds (Effective). 1 Week Federal Funds 6 Month Federal Funds 1 month LIBOR 3 Month LIBOR 6 Month LIBOR 12 Month LIBOR Conventional Mortgage Rate. 15 Year Fixed Mortgage Rate. 7 Year Balloon Mortgage Rate. Prime Rate 1 Month Treasury Bill 3 Month CMT 6 Month CMT 12 Month CMT

TABLE 3–2—WHOLE LOAN CLASSIFICATION VARIABLES—Continued

Variable	Description	Range
		24 Month CMT 36 Month CMT 60 Month CMT 120 Month CMT 240 Month CMT 360 Month CMT
Cap Type Flag	Indicates if a loan group is rate-capped, payment-capped or uncapped	Payment Capped Rate Capped No periodic rate cap

TABLE 3–3—ADDITIONAL SINGLE FAMILY LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Single Family Product Code	Identifies the mortgage product types for single family loans	Fixed Rate 30YR Fixed Rate 20YR Fixed Rate 15YR 5 Year Fixed Rate Balloon 7 Year Fixed Rate Balloon 10 Year Fixed Rate Balloon 15 Year Fixed Rate Balloon Adjustable Rate Second Lien Other
Census Division	The Census Division in which the property resides. This variable is populated based on the property's state code	East North Central East South Central Middle Atlantic Mountain New England Pacific South Atlantic West North Central West South Central
Relative Loan Size	Assigned classes for the loan amount at origination divided by the simple average of the loan amount for the origination year and for the state in which the property is located. It is expressed as a percent	0<=Size<=40% 40%<Size<=60% 60%<Size<=75% 75%<Size<=100% 100%<Size<=125% 125%<Size<=150% Size>150%

TABLE 3–4—ADDITIONAL MULTIFAMILY LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Multifamily Product Code	Identifies the mortgage product types for multifamily loans	Fixed Rate Fully Amortizing Adjustable Rate Fully Amortizing 5 Year Fixed Rate Balloon 7 Year Fixed Rate Balloon 10 Year Fixed Rate Balloon 15 Year Fixed Rate Balloon Balloon ARM Other
New Book Flag	''New Book'' is applied to Fannie Mae loans acquired beginning in 1988 and Freddie Mac loans acquired beginning in 1993, except for loans that were refinanced to avoid a default on a loan originated or acquired earlier	New Book Old Book
Ratio Update Flag	Indicates if the LTV and DCR were updated at origination or at Enterprise acquisition	Yes No
Interest Only Flag	Indicates if the loan is currently paying interest only. Loans that started as I/Os and are currently amortizing should be flagged as 'N'	Yes No
Current DCR	Assigned classes for the Debt Service Coverage Ratio based on the most recent annual operating statement	DCR <1.00 1.00 <=DCR<1.10 1.10 <=DCR<1.20 1.20 <=DCR<1.30 1.30 <=DCR<1.40 1.40 <=DCR<1.50 1.50 <=DCR<1.60 1.60 <=DCR<1.70 1.70 <=DCR<1.80

TABLE 3–4—ADDITIONAL MULTIFAMILY LOAN CLASSIFICATION VARIABLES—Continued

Variable	Description	Range
		1.80 <=DCR<1.90 1.90 <=DCR<2.00 2.00 <=DCR<2.50 2.50 <=DCR<4.00 DCR >= 4.00

3.1.2.1.1 Loan Group Inputs

TABLE 3–5—MORTGAGE AMORTIZATION CALCULATION INPUTS

Variable	Description
	Rate Type (Fixed or Adjustable)
	Product Type (30/20/15-Year FRM, ARM, Balloon, Government, etc.)
UPB_{ORIG}	Unpaid Principal Balance at Origination (aggregate for Loan Group)
UPB_0	Unpaid Principal Balance at start of Stress Test (aggregate for Loan Group), adjusted by UPB scale factor.
MIR_0	Mortgage Interest Rate for the Mortgage Payment prior to the start of the Stress Test, or Initial Mortgage Interest Rate for new loans (weighted average for Loan Group) (expressed as a decimal per annum)
PMT_0	Amount of the Mortgage Payment (Principal and Interest) prior to the start of the Stress Test, or first Payment for new loans (aggregate for Loan Group), adjusted by UPB scale factor.
AT	Original loan Amortizing Term in months (weighted average for Loan Group)
RM	Remaining term to Maturity in months (i.e., number of contractual payments due between the start of the Stress Test and the contractual maturity date of the loan) (weighted average for Loan Group)
A_0	Age of the loan at the start of Stress Test, in months (weighted average for Loan Group)
Unamortized Balance Scale Factor	Factor determined by reconciling reported Unamortized Balance to published financials
UPB Scale Factor	Factor determined by reconciling reported UPB to published financials
Additional Interest Rate Inputs	
GFR	Guarantee Fee Rate (weighted average for Loan Group) (decimal per annum)
SFR	Servicing Fee Rate (weighted average for Loan Group) (decimal per annum)
Additional Inputs for ARMs (weighted averages for Loan Group, except for Index)	
$INDEX_m$	Monthly values of the contractual Interest Rate Index
LB	Look-Back period, in months
MARGIN	Loan Margin (over index), decimal per annum
RRP	Rate Reset Period, in months
	Rate Reset Limit (up and down), decimal per annum
	Maximum Rate (life cap), decimal per annum
	Minimum Rate (life floor), decimal per annum
NAC	Negative Amortization Cap, decimal fraction of UPB_{ORIG}
	Unlimited Payment Reset Period, in months
PRP	Payment Reset Period, in months
	Payment Reset Limit, as decimal fraction of prior payment
IRP	Initial Rate Period, in months
Additional Inputs for Multifamily Loans	
	Interest-only Flag
RIOP	Remaining Interest-only period, in months (weighted average for loan group)

TABLE 3–6—ADDITIONAL INPUTS FOR SINGLE FAMILY DEFAULT AND PREPAYMENT

Variable	Description
PROD	Mortgage Product Type
A_0	Age *immediately prior to* start of Stress Test, in months (weighted average for Loan Group)
LTV_{ORIG}	Loan-to-Value ratio at Origination (weighted average for Loan Group)
UPB_{ORIG}	UPB at Origination (aggregate for Loan Group), adjusted by UPB scale factor.
MIR_{ORIG}	Mortgage Interest Rate at origination (''Initial Rate'' for ARMs), decimal per annum (weighted average for loan group)
UPB_0	Unpaid Principal Balance immediately prior to start of Stress Test (aggregate for Loan Group),
IF	Fraction (by UPB, in decimal form) of Loan Group backed by Investor-owned properties
RLS_{ORIG}	Weighted average Relative Loan Size at Origination (Original UPB as a fraction of average UPB for the state and Origination Year of loan origination)
$CHPGF_0^{LG}$	Cumulative House Price Growth Factor since Loan Origination (weighted average for Loan Group)

TABLE 3–7—ADDITIONAL INPUTS FOR MULTIFAMILY DEFAULT AND PREPAYMENT

Variable	Description
	Mortgage Product Type
A_0	Age *immediately prior to* start of Stress Test, in months (weighted average for Loan Group)
NBF	New Book Flag
RUF	Ratio Update Flag
LTV_{ORIG}	Loan-to-Value ratio at loan origination
DCR_0	Debt Service Coverage Ratio at the start of the Stress Test
PMT_0	Amount of the mortgage payment (principal and interest) prior to the start of the Stress Test, or first payment for new loans (aggregate for Loan Group)
PPEM	Prepayment Penalty End Month number in the Stress Test (weighted average for Loan Group)
RM	Remaining term to Maturity in months (i.e., number of contractual payments due between the start of the Stress Test and the contractual maturity date of the loan) (weighted average for Loan Group)

TABLE 3–8—MISCELLANEOUS WHOLE LOAN CASH AND ACCOUNTING FLOW INPUTS

Variable	Description
GF	Guarantee Fee rate (weighted average for Loan Group) (decimal per annum)
FDS	Float Days for Scheduled Principal and Interest
FDP	Float Days for Prepaid Principal
FREP	Fraction Repurchased (weighted average for Loan Group) (decimal)
RM	Remaining Term to Maturity in months
UPD_0	Unamortized Premium (positive) or Discount (negative) (Deferred Balances) for the Loan Group at the start of the Stress Test, adjusted by Unamortized Balance scale factor
$SUPD_0$	Security Unamortized Premium (positive) or Discount (negative) associated with the repurchase price of a Repurchased MBS (aggregate over all purchases of the same MBS)

TABLE 3–9—ADDITIONAL INPUTS FOR REPURCHASED MBS

Variable	Description
Wtd Ave Percent Repurchased	For sold loan groups, the percent of the loan group UPB that gives the actual dollar amount of loans that collateralize single class MBSs that the Enterprise holds in its own portfolio
Security Unamortized Balances	The aggregate sum of all unamortized discounts, premiums, fees, commissions, etc. associated with the securities modeled using the Wtd Ave Percent Repurchased

3.1.2.1.2 Credit Enhancement Inputs

To calculate reductions in mortgage credit losses due to credit enhancements, the following data are required for any credit-enhanced loans in a loan group. For this purpose, a Loan Group is divided into Distinct Credit Enhancement Combinations, as further described in section 3.6.3.6.4, Mortgage Credit Enhancement, of this Appendix.

TABLE 3–10—CE INPUTS FOR EACH LOAN GROUP

Variable	Description
UPB_{ORIG}^{LG}	Origination UPB.
LTV_{ORIG}^{LG}	Original LTV.

TABLE 3–11—INPUTS FOR EACH DISTINCT CE COMBINATION (DCC)

Variable	Description
P^{DCC}	Percent of Initial Loan Group UPB represented by individual loan(s) in a DCC
$R^{MI,DCC}$ or $R^{LSA,DCC}$	Credit rating of Loan Limit CE (MI or LSA) Counterparty
$C^{MI,DCC}$ or $C^{LSA,DCC}$	Weighted Average Coverage Percentage for MI or LSA Coverage (weighted by Initial UPB)
$AB_0^{DCC,C1}$	DCC Available First Priority CE Balance immediately prior to start of the Stress Test
$AB_0^{DCC,C2}$	DCC Available Second Priority CE Balance immediately prior to start of the Stress Test
$R^{DCC,C1}$	DCC Credit Rating of First Priority CE Provider or Counterparty; or Cash/Cash Equivalent (which is not Haircutted)
$R^{DCC,C2}$	DCC Credit Rating of Second Priority CE Provider or Counterparty; or Cash/Cash Equivalent (which is not Haircutted)
$C^{DCC,C1}$	DCC Loan-Level Coverage Limit of First Priority Contract (If Subtype is MPI; otherwise = 1)
$C^{DCC,C2}$	DCC Loan-Limit Coverage Limit of Second Priority Contract (if Subtype is MPI; otherwise = 1)
$ExpMo^{DCC,C1}$	Month in the Stress Test (1...120 or after) in which the DCC First Priority Contract expires
$ExpMo^{DCC,C2}$	Month in the Stress Test (1...120 or after) in which the DCC Second Priority Contract expires
$ELPF^{DCC,C1}$	DCC Enterprise Loss Position Flag for First Priority Contract (Y or N)
$ELPF^{DCC,C2}$	DCC Enterprise Loss Position Flag for Second Priority Contract (Y or N)

3.1.2.1.3 Commitments Inputs

[a] The Enterprises report Commitment Loan Group categories based on specific product type characteristics of securitized single family loans originated and delivered during the six months prior to the start of the Stress Test (*see* section 3.2, Commitments, of this Appendix). For each category, the Enterprises report the same information as for Whole Loan Groups with the following exceptions:

1. Amortization term and remaining term are set to those appropriate for newly originated loans;
2. Unamortized balances are set to zero;
3. The House Price Growth Factor is set to one;
4. Age is set to zero;
5. Any credit enhancement coverage other than mortgage insurance is not reported.

3.1.2.2 Mortgage Related Securities Inputs

[a] The Enterprises hold mortgage-related securities, including single class and Derivative Mortgage-Backed Securities (certain multi-class and strip securities) issued by Fannie Mae, Freddie Mac, and Ginnie Mae; mortgage revenue bonds issued by State and local governments and their instrumentalities; and single class and Derivative Mortgage-Backed Securities issued by private entities. The Stress Test models the cash flows of these securities individually. Table 3–12, Inputs for Single Class MBS Cash Flows sets forth the data elements that the Enterprises must compile in the RBC Report regarding each MBS held in their portfolios. This information is necessary for determining associated cash flows in the Stress Test.

TABLE 3–12—INPUTS FOR SINGLE CLASS MBS CASH FLOWS

Variable	Description
Pool Number	A unique number identifying each mortgage pool
CUSIP Number	A unique number assigned to publicly traded securities by the Committee on Uniform Securities Identification Procedures
Issuer	Issuer of the mortgage pool
Government Flag	Indicates Government insured collateral
Original UPB Amount	Original pool balance adjusted by UPB scale factor and multiplied by the Enterprise's percentage ownership
Current UPB Amount	Initial Pool balance (at the start of the Stress Test), adjusted by UPB scale factor and multiplied by the Enterprise's percentage ownership
Product Code	Mortgage product type for the pool
Security Rate Index	If the rate on the security adjusts over time, the index that the adjustment is based on
Unamortized Balance	The sum of all unamortized discounts, premiums, fees, commissions, etc. adjusted by Unamortized Balance scale factor

TABLE 3–12—INPUTS FOR SINGLE CLASS MBS CASH FLOWS—Continued

Variable	Description
Wt Avg Original Amortization Term	Original amortization term of the underlying loans, in months (weighted average for underlying loans)
Wt Avg Remaining Term of Maturity	Remaining maturity of the underlying loans at the start of the Stress Test (weighted average for underlying loans)
Wt Avg Age	Age of the underlying loans at the start of the Stress Test (weighted average for underlying loans)
Wt Avg Current Mortgage Interest rate	Mortgage Interest Rate of the underlying loans at the start of the Stress Test (weighted average for underlying loans)
Wt Avg Pass-Through Rate	Pass-Through Rate of the underlying loans at the start of the Stress Test (Sold loans only) (weighted average for underlying loans)
Wt Avg Original Mortgage Interest Rate	The current UPB weighted average mortgage interest rate in effect at origination for the loans in the pool
Security Rating	The most current rating issued by any Nationally Recognized Statistical Rating Organization (NRSRO) for this security, as of the reporting date
Wt Avg Gross Margin	Gross margin for the underlying loans (ARM MBS only) (weighted average for underlying loans)
Wt Avg Net Margin	Net margin (used to determine the security rate for ARM MBS) (weighted average for underlying loans)
Wt Avg Rate Reset Period	Rate reset period in months (ARM MBS only) (weighted average for underlying loans)
Wt Avg Rate Reset Limit	Rate reset limit up/down (ARM MBS only) (weighted average for underlying loans)
Wt Avg Life Interest Rate Ceiling	Maximum rate (lifetime cap) (ARM MBS only) (weighted average for underlying loans)
Wt Avg Life Interest Rate Floor	Minimum rate (lifetime floor) (ARM MBS only) (weighted average for underlying loans)
Wt Avg Payment Reset Period	Payment reset period in months (ARM MBS only) (weighted average for underlying loans)
Wt Avg Payment Reset Limit	Payment reset limit up/down (ARM MBS only) (weighted average for underlying loans)
Wt Avg Lockback Period	The number of months to look back from the interest rate change date to find the index value that will be used to determine the next interest rate. (weighted average for underlying loans)
Wt Avg Negative Amortization Cap	The maximum amount to which the balance can increase before the payment is recast to a fully amortizing amount. It is expressed as a fraction of the original UPB. (weighted average for underlying loans)
Wt Avg Original Mortgage Interest Rate	The current UPB weighted average original mortgage interest rate for the loans in the pool
Wt Avg Initial Interest Rate Period	Number of months between the loan origination date and the first rate adjustment date (weighted average for underlying loans)
Wt Avg Unlimited Payment Reset Period	Number of months between unlimited payment resets i.e., not limited by payment caps, starting with origination date (weighted average for underlying loans)
Notional Flag	Indicates if the amounts reported in Original Security Balance and Current Security Balance are notional
UPB Scale Factor	Factor determined by reconciling reported UPB to published financials
Unamortized Balance Scale Factor	Factor determined by reconciling reported Unamortized Balance to published financials
Whole Loan Modeling Flag	Indicates that the Current UPB Amount and Unamortized Balance associated with this repurchased MBS are included in the Wt Avg Percent Repurchased and Security Unamortized Balance fields
FAS 115 Classification	The financial instrument's classification according to FAS 115
$HPGR_K$	Vector of House Price Growth Rates for quarters q =1...40 of the Stress Period

[b] Table 3–13, Information for Multi-Class and Derivative MBS Cash Flows Inputs sets forth the data elements that the Enterprises must compile regarding multi-class and Derivative MBS (e.g., REMICs and Strips). This information is necessary for determining associated cash flows in the Stress Test.

TABLE 3–13—INFORMATION FOR MULTI-CLASS AND DERIVATIVE MBS CASH FLOWS INPUTS

Variable	Description
CUSIP Number	A unique number assigned to publicly traded securities by the Committee on Uniform Securities Identification Procedures
Issuer	Issuer of the security: FNMA, FHLMC, GNMA or other
Original Security Balance	Original principal balance of the security (notional amount for interest-only securities) at the time of issuance, adjusted by UPB scale factor, multiplied by the Enterprise's percentage ownership

TABLE 3–13—INFORMATION FOR MULTI-CLASS AND DERIVATIVE MBS CASH FLOWS INPUTS—Continued

Variable	Description
Current Security Balance	Initial principal balance, or notional amount, at the start of the Stress Period, adjusted by UPB scale factor, multiplied by the Enterprise's percentage ownership
Current Security Percentage Owned	The percentage of a security's total current balance owned by the Enterprise
Notional Flag	Indicates if the amounts reported in Original Security Balance and Current Security Balance are notional
Unamortized Balance	The sum of all unamortized discounts, premiums, fees, commissions, etc. Components of the balance that amortize as a gain (like discounts) should be positive. Components that amortize as a cost or as a loss (premiums, fees, etc.) should be negative
Unamortized Balance Scale Factor	Factor determined by reconciling reported Unamortized Balance to published financials
UPB Scale Factor	Factor determined by reconciling the reported current security balance to published financials
Security Rating	The most current rating issued by any Nationally Recognized Statistical Rating Organization (NRSRO) for this security, as of the reporting date

[c] Table 3–14, Inputs for MRBs and Derivative MBS Cash Flows Inputs sets forth the data elements that the Enterprises must compile in the RBC Report regarding mortgage revenue bonds and private issue mortgage related securities (MRS). The data in this table is supplemented with public securities disclosure data. This information is necessary for determining associated cash flows in the Stress Test.

TABLE 3–14—INPUTS FOR MRBS AND DERIVATIVE MBS CASH FLOWS INPUTS

Variable	Description
CUSIP Number	A unique number assigned to publicly traded securities by the Committee on Uniform Securities Identification Procedures
Original Security Balance	Original principal balance, adjusted by UPB scale factor and multiplied by the Enterprise's percentage ownership
Current Security Balance	Initial Principal balance (at start of Stress Period), adjusted by UPB scale factor and multiplied by the Enterprise's percentage ownership
Unamortized Balance	The sum of all unamortized discounts, premiums, fees, commissions, etc. adjusted by Unamortized Balance scale factor
Unamortized Balance Scale Factor	Factor determined by reconciling reported Unamortized Balance to published financials
UPB Scale Factor	Factor determined by reconciling the reported current security balance to published financials
Floating Rate Flag	Indicates the instrument pays interest at a floating rate
Issue Date	The issue date of the security
Maturity Date	The stated maturity date of the security
Security Interest Rate	The rate at which the security earns interest, as of the reporting date
Principal Payment Window Starting Date, Down-Rate Scenario	The month in the Stress Test that principal payment is expected to start for the security under the statutory ''down'' interest rate scenario, according to Enterprise projections
Principal Payment Window Ending Date, Down-Rate Scenario	The month in the Stress Test that principal payment is expected to end for the security under the statutory ''down'' interest rate scenario, according to Enterprise projections
Principal Payment Window Starting Date, Up-Rate Scenario	The month in the Stress Test that principal payment is expected to start for the security under the statutory ''up'' interest rate scenario, according to Enterprise projections
Principal Payment Window Ending Date, Up-Rate Scenario	The month in the Stress Test that principal payment is expected to end for the security under the statutory ''up'' interest rate scenario, according to Enterprise projections
Notional Flag	Indicates if the amounts reported in Original Security Balance and Current Security Balance are notional
Security Rating	The most current rating issued by any Nationally Recognized Statistical Rating Organization (NRSRO) for this security, as of the reporting date
Security Rate Index	If the rate on the security adjusts over time, the index on which the adjustment is based
Security Rate Index Coefficient	If the rate on the security adjusts over time, the coefficient is the number used to multiply by the value of the index
Security Rate Index Spread	If the rate on the security adjusts over time, the spread is added to the value of the index multiplied by the coefficient to determine the new rate
Security Rate Adjustment Frequency	The number of months between rate adjustments

TABLE 3–14—INPUTS FOR MRBS AND DERIVATIVE MBS CASH FLOWS INPUTS—Continued

Variable	Description
Security Interest Rate Ceiling	The maximum rate (lifetime cap) on the security
Security Interest Rate Floor	The minimum rate (lifetime floor) on the security
Life Ceiling Interest Rate	The maximum interest rate allowed throughout the life of the security
Life Floor Interest Rate	The minimum interest rate allowed throughout the life of security

3.1.2.3 Nonmortgage Instrument Cash Flows Inputs

Table 3–15, Input Variables for Nonmortgage Instrument Cash flows sets forth the data elements that the Enterprises must compile in the RBC Report to identify individual securities (other than Mortgage Related Securities) that are held by the Enterprises in their portfolios. These include debt securities, preferred stock, and derivative contracts (interest rate swaps, caps, and floors). All data are instrument specific. The data in this table are supplemented by public securities disclosure data. For instruments with complex or non-standard features, the Enterprises may be required to provide additional information such as amortization schedules, interest rate coupon reset formulas, and the terms of the call options.

TABLE 3–15—INPUT VARIABLES FOR NONMORTGAGE INSTRUMENT CASH FLOWS

Data Elements	Description
Amortization Methodology Code	Enterprise method of amortizing deferred balances (e.g., straight line)
Asset ID	CUSIP or Reference Pool Number identifying the asset underlying a derivative position
Asset Type Code	Code that identifies asset type used in the commercial information service (e.g. ABS, Fannie Mae pool, Freddie Mac pool)
Associated Instrument ID	Instrument ID of an instrument linked to another instrument
Coefficient	Indicates the extent to which the coupon is leveraged or de-leveraged
Compound Indicator	Indicates if interest is compounded
Compounding Frequency	Indicates how often interest is compounded
Counterparty Credit Rating	NRSRO's rating for the counterparty
Counterparty Credit Rating Type	An indicator identifying the counterparty's credit rating as short-term ('S') or long-term ('L')
Counterparty ID	Enterprise counterparty tracking ID
Country Code	Standard country codes in compliance with Federal Information Processing Standards Publication 10–4
Credit Agency Code	Identifies NRSRO (e.g., Moody's)
Current Asset Face Amount	Current face amount of the asset underlying a swap adjusted by UPB scale factor
Current Coupon	Current coupon or dividend rate of the instrument
Current Unamortized Discount	Current unamortized premium or unaccreted discount of the instrument adjusted by Unamortized Balance scale factor
Current Unamortized Fees	Current unamortized fees associated with the instrument adjusted by Unamortized Balance scale factor
Current Unamortized Hedge	Current unamortized hedging gains or losses associated with the instrument adjusted by Unamortized Balance scale factor
Current Unamortized Other	Any other unamortized items originally associated with the instrument adjusted by Unamortized Balance scale factor
CUSIP__ISIN	CUSIP or ISIN Number identifying the instrument
Day Count	Day count convention (e.g. 30/360)
End Date	The last index repricing date
EOP Principal Balance	End of Period face, principal or notional, amount of the instrument adjusted by UPB scale factor
Exact Representation	Indicates that an instrument is modeled according to its contractual terms
Exercise Convention	Indicates option exercise convention (e.g., American Option)
Exercise Price	Par = 1.0; Options
First Coupon Date	Date first coupon is received or paid
Index Cap	Indicates maximum index rate
Index Floor	Indicates minimum index rate
Index Reset Frequency	Indicates how often the interest rate index resets on floating-rate instruments
Index Code	Indicates the interest rate index to which floating-rate instruments are tied (e.g., LIBOR)

TABLE 3–15—INPUT VARIABLES FOR NONMORTGAGE INSTRUMENT CASH FLOWS—Continued

Data Elements	Description
Index Term	Point on yield curve, expressed in months, upon which the index is based
Instrument Credit Rating	NRSRO credit rating for the instrument
Instrument Credit Rating Type	An indicator identifying the instruments credit rating as short-term ('S') or long-term ('L')
Instrument ID	An integer used internally by the Enterprise that uniquely identifies the instrument
Interest Currency Code	Indicates currency in which interest payments are paid or received
Interest Type Code	Indicates the method of interest rate payments (e.g., fixed, floating, step, discount)
Issue Date	Indicates the date that the instrument was issued
Life Cap Rate	The maximum interest rate for the instrument throughout its life
Life Floor Rate	The minimum interest rate for the instrument throughout its life
Look-Back Period	Period from the index reset date, expressed in months, that the index value is derived
Maturity Date	Date that the instrument contractually matures
Notional Indicator	Identifies whether the face amount is notional
Instrument Type Code	Indicates the type of instrument to be modeled (e.g., ABS, Cap, Swap)
Option Indicator	Indicates if instrument contains an option
Option Type	Indicates option type (e.g., Call option)
Original Asset Face Amount	Original face amount of the asset underlying a swap adjusted by UPB scale factor
Original Discount	Original discount or premium amount of the instrument adjusted by Unamortized Balance scale factor
Original Face	Original face, principal or notional, amount of the instrument adjusted by UPB scale factor
Original Fees	Fees associated with the instrument at inception adjusted by Unamortized Balance scale factor
Original Hedge	Hedging gain or loss to be amortized or accreted at inception adjusted by Unamortized Balance scale factor
Original Other	Any other amounts originally associated with the instrument to be amortized or accreted adjusted by Unamortized Balance scale factor
Parent Entity ID	Enterprise internal tracking ID for parent entity
Payment Amount	Interest payment amount associated with the instrument (reserved for complex instruments where interest payments are not modeled) adjusted by UPB scale factor
Payment Frequency	Indicates how often interest payments are made or received
Performance Date	''As of'' date on which the data is submitted
Periodic Adjustment	The maximum amount that the interest rate for the instrument can change per reset
Position Code	Indicates whether the Enterprise pays or receives interest on the instrument
Principal Currency Code	Indicates currency in which principal payments are paid or received
Principal Factor Amount	EOP Principal Balance expressed as a percentage of Original Face
Principal Payment Date	A valid date identifying the date that principal is paid
Settlement Date	A valid date identifying the date the settlement occurred
Spread	An amount added to an index to determine an instrument's interest rate
Start Date	The date, spot or forward, when some feature of a financial contract becomes effective (e.g., Call Date), or when interest payments or receipts begin to be calculated
Strike Rate	The price or rate at which an option begins to have a settlement value at expiration, or, for interest-rate caps and floors, the rate that triggers interest payments
Submitting Entity	Indicates which Enterprise is submitting information
Trade ID	Unique code identifying the trade of an instrument
Transaction Code	Indicates the transaction that an Enterprise is initiating with the instrument (e.g. buy, issue reopen)
Transaction Date	A valid date identifying the date the transaction occurred
UPB Scale Factor	Factor determined by reconciling reported UPB to published financials

TABLE 3–15—INPUT VARIABLES FOR NONMORTGAGE INSTRUMENT CASH FLOWS—Continued

Data Elements	Description
Unamortized Balances Scale Factor	Factor determined by reconciling reported Unamortized Balances to published financials

3.1.2.4 Inputs for Alternative Modeling Treatment Items

TABLE 3–16—INPUTS FOR ALTERNATIVE MODELING TREATMENT ITEMS

Variable	Description
TYPE	Type of item (asset, liability or off-balance sheet item)
BOOK	Book Value of item (amount outstanding adjusted for deferred items)
FACE	Face Value or notional balance of item for off-balance sheet items
REMATUR	Remaining Contractual Maturity of item in whole months. Any fraction of a month equals one whole month
RATE	Interest Rate
INDEX	Index used to calculate Interest Rate
FAS115	Designation that the item is recorded at fair value, according to FAS 115
RATING	Instrument or counterparty rating
FHA	In the case of off-balance sheet guarantees, a designation indicating 100% of collateral is guaranteed by FHA
UABAL	Unamortized Balance (Book minus Face)
MARGIN	Margin over an Index

3.1.2.5 Operations, Taxes, and Accounting Inputs

[a] Table 3–17, Operations, Taxes, and Accounting Inputs sets forth the data the Enterprises must compile in the RBC Report to permit the calculation of taxes, operating expenses, and dividends. These data include:

- Average monthly Operating Expenses (i.e., administrative expenses, salaries and benefits, professional services, property costs, equipment costs) for the quarter prior to the beginning of the Stress Test;
- Income for the current year-to-date, one year, and two years prior to the beginning of the stress test, before taxes and provision for income taxes;
- Dividend payout ratio for the four quarters prior to the beginning of the Stress Period;
- Minimum capital requirement as of the beginning of the Stress Period.

TABLE 3–17—OPERATIONS, TAXES, AND ACCOUNTING INPUTS

Input	Description
FAS 115 and 125 fair value adjustment on retained mortgage portfolio	
FAS 133 fair value adjustment on retained mortgage portfolio	
Reserve for losses on retained mortgage portfolio	
FAS 115 and 125 fair value adjustments on non-mortgage investments	
FAS 133 fair value adjustments on non-mortgage investments	
Total cash	
Accrued interest receivable on mortgages	
Accrued interest receivable on non-mortgage investment securities	
Accrued interest receivable on non-mortgage investment securities denominated in foreign currency—hedged	
Accrued interest receivable on non-mortgage investment securities denominated in foreign currency—unhedged	
Accrued interest receivable on mortgage-linked derivatives, gross	
Accrued interest receivable on investment-linked derivatives, gross	
Accrued interest receivable on debt-linked derivatives, gross	
Other accrued interest receivable	
Accrued interest receivable on hedged debt-linked foreign currency swaps	Underlying instrument is GSE issued debt
Accrued interest receivable on unhedged debt-linked foreign currency swaps	

TABLE 3–17—OPERATIONS, TAXES, AND ACCOUNTING INPUTS—Continued

Input	Description
Accrued interest receivable on hedged asset-linked foreign currency swaps	Underlying instrument is an asset
Accrued interest receivable on unhedged asset-linked foreign currency swaps	
Currency transaction adjustments—hedged assets	Cumulative gain or loss due to changes in foreign exchange rates relative to on-balance sheet assets originally denominated in foreign currency
Currency transaction adjustments—unhedged assets	Cumulative gain or loss due to changes in foreign exchange rates relative to unhedged assets and off-balance sheet items originally denominated in foreign currency
Federal income tax refundable	
Accounts receivable	
Fees receivable	
Low income housing tax credit investments	
Fixed assets, net	
Clearing accounts	Net book value of all clearing accounts
Other assets	
Foreclosed property, net	Real estate owned including property acquired through foreclosure proceedings
FAS 133 fair value adjustment on debt securities	
Accrued interest payable on existing fixed-rate debt securities	
Accrued interest payable on existing floating-rate debt securities	
Accrued interest payable on existing debt issued in foreign currency—hedged	
Accrued interest payable on existing debt issued in foreign currency—unhedged	
Accrued interest payable on mortgage-linked derivatives, gross	
Accrued interest payable on investment-linked derivatives, gross	
Accrued interest payable on debt-linked derivatives, gross	
Other accrued interest payable	
Accrued interest payable debt-linked foreign currency swaps—hedged	
Accrued interest payable debt-linked foreign currency swaps—unhedged	
Accrued interest payable asset-linked foreign currency swaps—hedged	
Accrued interest payable asset-linked foreign currency swaps—unhedged	
Principal and interest due to mortgage security investors	Cash received on sold mortgages for onward submission to mortgage security investors
Currency transaction adjustments—hedged debt	Cumulative gain or loss due to changes in foreign exchange rates relative to on-balance sheet debt originally denominated in foreign currency
Currency transaction adjustments—unhedged debt	Cumulative gain or loss due to changes in foreign exchange rates relative to unhedged liabilities and off-balance sheet items originally denominated in foreign currency
Escrow deposits	Cash balances held in relation to servicing of multi-family loans
Federal income taxes payable	
Preferred dividends payable	
Accounts payable	
Other liabilities	
Common dividends payable	
Reserve for losses on sold mortgages	
Common stock	
Preferred stock, non-cumulative	
Additional paid-in capital	

TABLE 3–17—OPERATIONS, TAXES, AND ACCOUNTING INPUTS—Continued

Input	Description
Retained earnings	
Treasury stock	
Unrealized gains and losses on available-for-sale securities, net of tax, in accordance with FAS 115 and 125	
Unrealized gains and losses due to mark to market adjustments, FAS 115 and 125	
Unrealized gains and losses due to deferred balances related to pre-FAS 115 and 125 adjustments	
Unrealized gains and losses due to other realized gains, FAS 115	
Other comprehensive income, net of tax, in accordance with FAS 133	
OCI due to mark to market adjustments, FAS 133	
OCI due to deferred balances related to pre-FAS 133 adjustments	
OCI due to other realized gains, FAS 133	
Operating expenses	Average of prior three months
Common dividend payout ratio (average of prior 4 quarters)	Sum dollar amount of common dividends paid over prior 4 quarters and divided by the sum of total of after tax income less preferred dividends paid over prior 4 quarters
Common dividends per share paid 1 quarter prior to the beginning of the stress period	
Common shares outstanding	
Common Share Market Price	
Dividends paid on common stock 1 quarter prior to the beginning of the stress period	
Share Repurchases (average of prior 4 quarters)	Sum dollar amount of repurchased shares, net of newly issued shares, over prior 4 quarters and divided by 4
Off-balance-sheet Guarantees	Guaranteed instruments not reported on the balance sheet, such as whole loan REMICs and multifamily credit enhancements, and not 100% guaranteed by the FHA
Other Off-Balance Sheet Guarantees	All other off-balance sheet guaranteed instruments not included in another category, and not 100% guaranteed by the FHA
YTD provision for income taxes	Provision for income taxes for the period beginning January 1 and ending as of the report date
Tax loss carryforward	Net losses available to write off against future years' net income
Tax liability for the year prior to the beginning of the Stress Test	
Tax liability for the year 2 years prior to the beginning of the Stress Test (net of carrybacks)	
Taxable income for the year prior to the beginning of the Stress Test	
Taxable income for the year 2 years prior to the beginning of the Stress Test (net of carrybacks)	
Net after tax income for the quarter preceding the start of the stress test	
YTD taxable income	Total amount of taxable income for the period beginning January 1 and ending as of the report date
Minimum capital requirement at the beginning of the Stress Period	
Specific allowance for loan losses	Loss allowances calculated in accordance with FAS 114
Zero coupon swap receivable	
Unamortized discount on zero coupon swap receivable	

3.1.3 Public Data

3.1.3.1 Interest Rates

[a] The Interest Rates component of the Stress Test projects Treasury yields as well as other interest rate indexes that are needed to calculate cash flows, to simulate the performance of mortgages and other financial instruments, and to calculate capital for each of the 120 months in the Stress Period. Table 3–18, Interest Rate and Index Inputs, sets forth the interest rate indexes used in the Stress Test

[b] The starting values for all of the Interest Rates are the monthly average of daily rates for the month preceding the start of the stress test.

[c] For the 10-year CMT, monthly values are required for the three years prior to the start of the Stress Test (m = −35, −34...0). For all other indexes, monthly values for the prior two years are required (m = −23, −22...0).

TABLE 3–18—INTEREST RATE AND INDEX INPUTS

Interest Rate Index	Description	Source
1 MO Treasury Bill	One-month Treasury bill yield, monthly simple average of daily rate, quoted as actual/360	Bloomberg Generic 1 Month U.S. Treasury bill, Ticker: GB1M (index)
3 MO CMT	Three-month constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
6 MO CMT	Six-month constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
1 YR CMT	One-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
2 YR CMT	Two-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
3 YR CMT	Three-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
5 YR CMT	Five-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
10 YR CMT	Ten-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
20 YR CMT	Twenty-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
30 YR CMT	Thirty-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
Overnight Fed Funds (Effective)	Overnight effective Federal Funds rate, monthly simple average of daily rate	Federal Reserve H.15 Release
1 Week Federal Funds	1 week Federal Funds rate, monthly simple average of daily rates	Bloomberg Term Fed Funds U.S. Domestic, Ticker: FFTD01W (index)
6 Month Fed Funds	6 month Federal Funds rate, monthly simple average of daily rates	Bloomberg Term Fed Funds U.S. Domestic, Ticker: FFTD06M (index)
Conventional Mortgage Rate	FHLMC (Freddie Mac) contract interest rates for 30 YR fixed-rate mortgage commitments, monthly average of weekly rates	Federal Reserve H.15 Release
FHLB 11th District COF	11th District (San Francisco) weighted average cost of funds for savings and loans, monthly	Bloomberg Cost of Funds for the 11th District Ticker: COF11 (index)
1 MO LIBOR	One-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association Bloomberg Ticker: US0001M (index)
3 MO LIBOR	Three-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association Bloomberg Ticker: US0003M (index)
6 MO LIBOR	Six-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association Bloomberg Ticker: US0006M (index)
12 MO LIBOR	One-year London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association Bloomberg Ticker: US0012M (index)
Prime Rate	Prevailing rate as quoted, monthly average of daily rates	Federal Reserve H.15 Release
1 MO Federal Agency COF	One-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 1 Month Agency Discount Note Yield Ticker: AGDN030Y (index)
3 MO Federal Agency COF	Three-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 3 Month Agency Discount Note Yield Ticker: AGDN090Y (index)
6 MO Federal Agency COF	Six-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 6 Month Agency Discount Note Yield Ticker: AGDN180Y (index)

TABLE 3–18—INTEREST RATE AND INDEX INPUTS—Continued

Interest Rate Index	Description	Source
1 YR Federal Agency COF	One-year Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 12 Month Agency Discount Note Yield Ticker: AGDN360Y (index)
2 YR Federal Agency COF	Two-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 2 Year Agency Fair Market Yield Ticker: AGAC02 (index)
3 YR Federal Agency COF	Three-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 3 Year Agency Fair Market Yield Ticker: AGAC03 (index)
5 YR Federal Agency COF	Five-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 5 Year Agency Fair Market Yield Ticker: AGAC05 (index)
10 YR Federal Agency COF	Ten-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 10 Year Agency Fair Market Yield Ticker: AGAC10 (index)
30 YR Federal Agency COF	Thirty-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 30 Year Agency Fair Market Yield Ticker: AGAC30 (index)
15 YR fixed-rate mortgage	FHLMC (Freddie Mac) contract interest rates for 15 YR fixed-rate mortgage commitments, monthly average of FHLMC (Freddie Mac) contract interest rates for 15 YR	Bloomberg FHLMC 15 YR, 10 day commitment rate Ticker: FHCR1510 (index)
7-year balloon mortgage rate	Seven-year balloon mortgage, equal to the Conventional Mortgage Rate less 50 basis points	Computed

3.1.3.2 Property Valuation Inputs

Table 3–19, Stress Test Single Family Quarterly House Price Growth Rates and Table 3–21, HPI Dispersion Parameters, set forth inputs which are used to project single family mortgage performance. Table 3–20, Multifamily Monthly Rent Growth and Vacancy Rates, sets forth inputs which are used to project multifamily mortgage performance.

TABLE 3–19—STRESS TEST SINGLE FAMILY QUARTERLY HOUSE PRICE GROWTH RATES [1]

Stress Test Months	Historical Months	House Price Growth Rate	Stress Test Months	Historical Months	House Price Growth Rate
1–3	Jan–Mar 1984	–0.005048	61–63	Jan–Mar 1989	0.006292
4–6	Apr–Jun 1984	0.001146	64–66	Apr–Jun 1989	0.010523
7–9	Jul–Sep 1984	0.001708	67–69	Jul–Sep 1989	0.017893
10–12	Oct–Dec 1984	–0.007835	70–72	Oct–Dec 1989	–0.004881
13–15	Jan–Mar 1985	–0.006975	73–75	Jan–Mar 1990	–0.000227
16–18	Apr–Jun 1985	0.004178	76–78	Apr–Jun 1990	0.008804
19–21	Jul–Sep 1985	–0.005937	79–81	Jul–Sep 1990	0.003441
22–24	Oct–Dec 1985	–0.019422	82–84	Oct–Dec 1990	–0.003777
25–27	Jan–Mar 1986	0.026231	85–87	Jan–Mar 1991	0.009952
28–30	Apr–Jun 1986	0.022851	88–90	Apr–Jun 1991	0.012616
31–33	Jul–Sep 1986	–0.021402	91–93	Jul–Sep 1991	0.002267
34–36	Oct–Dec 1986	–0.018507	94–96	Oct–Dec 1991	0.012522
37–39	Jan–Mar 1987	0.004558	97–99	Jan–Mar 1992	0.013378
40–42	Apr–Jun 1987	–0.039306	100–102	Apr–Jun 1992	–0.000519
43–45	Jul–Sep 1987	–0.024382	103–105	Jul–Sep 1992	0.016035
46–48	Oct–Dec 1987	–0.026761	106–108	Oct–Dec 1992	0.005691
49–51	Jan–Mar 1988	–0.003182	109–111	Jan–Mar 1993	0.005723
52–54	Apr–Jun 1988	0.011854	112–114	Apr–Jun 1993	0.010614
55–57	Jul–Sep 1988	–0.020488	115–117	Jul–Sep 1993	0.013919
58–60	Oct–Dec 1988	–0.007260	118–120	Oct–Dec 1993	0.011267

[1] Source: OFHEO House Price Report, 1996:3.

TABLE 3–20—MULTIFAMILY MONTHLY RENT GROWTH [1] AND VACANCY RATES [2]

Stress Test Month	Historical Month	Rent Growth Rate	Vacancy Rate	Stress Test Month	Historical Month	Rent Growth Rate	Vacancy Rate
1	Jan 1984	0.001367	0.136	61	Jan 1989	0.000052	0.135
2	Feb 1984	0.001186	0.136	62	Feb 1989	0.000284	0.135
3	Mar 1984	0.001422	0.136	63	Mar 1989	0.000404	0.135
4	Apr 1984	0.001723	0.136	64	Apr 1989	0.000150	0.135
5	May 1984	0.001537	0.136	65	May 1989	0.000331	0.135
6	Jun 1984	0.001354	0.136	66	Jun 1989	0.001483	0.135
7	Jul 1984	0.000961	0.136	67	Jul 1989	0.000759	0.135
8	Aug 1984	0.000601	0.136	68	Aug 1989	0.001502	0.135
9	Sep 1984	0.001106	0.136	69	Sep 1989	0.002254	0.135
10	Oct 1984	0.001623	0.136	70	Oct 1989	0.002768	0.135
11	Nov 1984	0.001395	0.136	71	Nov 1989	0.002220	0.135
12	Dec 1984	0.001170	0.136	72	Dec 1989	0.002040	0.135
13	Jan 1985	0.001014	0.150	73	Jan 1990	0.002180	0.120
14	Feb 1985	0.000857	0.150	74	Feb 1990	0.002772	0.120
15	Mar 1985	0.000315	0.150	75	Mar 1990	0.002867	0.120
16	Apr 1985	–0.000225	0.150	76	Apr 1990	0.003243	0.120
17	May 1985	0.000154	0.150	77	May 1990	0.002963	0.120
18	Jun 1985	0.000534	0.150	78	Jun 1990	0.003588	0.120
19	Jul 1985	0.001115	0.150	79	Jul 1990	0.004885	0.120
20	Aug 1985	0.001702	0.150	80	Aug 1990	0.004564	0.120
21	Sep 1985	0.001576	0.150	81	Sep 1990	0.005491	0.120
22	Oct 1985	0.001450	0.150	82	Oct 1990	0.005475	0.120
23	Nov 1985	0.001357	0.150	83	Nov 1990	0.005763	0.120
24	Dec 1985	0.001266	0.150	84	Dec 1990	0.005817	0.120
25	Jan 1986	0.001823	0.168	85	Jan 1991	0.005261	0.108
26	Feb 1986	0.002392	0.168	86	Feb 1991	0.005456	0.108
27	Mar 1986	0.002665	0.168	87	Mar 1991	0.005637	0.108
28	Apr 1986	0.002942	0.168	88	Apr 1991	0.005843	0.108
29	May 1986	0.002517	0.168	89	May 1991	0.005970	0.108
30	Jun 1986	0.002105	0.168	90	Jun 1991	0.005719	0.108
31	Jul 1986	0.001372	0.168	91	Jul 1991	0.005533	0.108
32	Aug 1986	0.000652	0.168	92	Aug 1991	0.004512	0.108
33	Sep 1986	0.000110	0.168	93	Sep 1991	0.003916	0.108
34	Oct 1986	–0.000431	0.168	94	Oct 1991	0.003779	0.108
35	Nov 1986	–0.000201	0.168	95	Nov 1991	0.004226	0.108
36	Dec 1986	0.000030	0.168	96	Dec 1991	0.004791	0.108
37	Jan 1987	–0.001448	0.175	97	Jan 1992	0.005361	0.098
38	Feb 1987	–0.002162	0.175	98	Feb 1992	0.004085	0.098
39	Mar 1987	–0.001202	0.175	99	Mar 1992	0.003885	0.098
40	Apr 1987	–0.001136	0.175	100	Apr 1992	0.002992	0.098
41	May 1987	–0.001466	0.175	101	May 1992	0.002941	0.098

TABLE 3–20—MULTIFAMILY MONTHLY RENT GROWTH [1] AND VACANCY RATES [2]—Continued

Stress Test Month	Historical Month	Rent Growth Rate	Vacancy Rate	Stress Test Month	Historical Month	Rent Growth Rate	Vacancy Rate
42	Jun 1987	–0.002809	0.175	102	Jun 1992	0.002851	0.098
43	Jul 1987	–0.002069	0.175	103	Jul 1992	0.002346	0.098
44	Aug 1987	–0.002530	0.175	104	Aug 1992	0.003850	0.098
45	Sep 1987	–0.001033	0.175	105	Sep 1992	0.003245	0.098
46	Oct 1987	–0.001148	0.175	106	Oct 1992	0.003194	0.098
47	Nov 1987	–0.001617	0.175	107	Nov 1992	0.001931	0.098
48	Dec 1987	–0.002064	0.175	108	Dec 1992	0.001494	0.098
49	Jan 1988	–0.001372	0.158	109	Jan 1993	0.001527	0.104
50	Feb 1988	–0.001524	0.158	110	Feb 1993	0.002317	0.104
51	Mar 1988	–0.001972	0.158	111	Mar 1993	0.001904	0.104
52	Apr 1988	–0.001363	0.158	112	Apr 1993	0.002545	0.104
53	May 1988	–0.001143	0.158	113	May 1993	0.002570	0.104
54	Jun 1988	–0.001194	0.158	114	Jun 1993	0.002449	0.104
55	Jul 1988	–0.001429	0.158	115	Jul 1993	0.002161	0.104
56	Aug 1988	–0.001315	0.158	116	Aug 1993	0.001857	0.104
57	Sep 1988	–0.002581	0.158	117	Sep 1993	0.001664	0.104
58	Oct 1988	–0.002337	0.158	118	Oct 1993	0.002184	0.104
59	Nov 1988	–0.001218	0.158	119	Nov 1993	0.002932	0.104
60	Dec 1988	–0.000203	0.158	120	Dec 1993	0.002776	0.104

[1] Source: U.S. Department of Labor, Bureau of Labor Statistics, Rent of Primary Residence component of the Consumer Price Index—All Urban Consumers.
[2] Source: U.S. Census Bureau, Housing Vacancy Survey—Annual 1999.

TABLE 3–21—HPI DISPERSION PARAMETERS [1]

	Linear (α)	Quadratic (β)
Dispersion Parameter	0.002977	−0.000024322

[1] Source: OFHEO House Price Report, 1996:3.

3.1.4 Constant Values

Certain values are numerical constants that are parameters of the cash flow simulation. These values are established by OFHEO on the basis of analysis of Benchmark and other historical data.

3.1.4.1 Single Family Loan Performance

TABLE 3–22—LOAN GROUP INPUTS FOR SINGLE FAMILY GROSS LOSS SEVERITY

Variable	Description	Value	Source
MQ	Months Delinquent: time during which Enterprise pays delinquent loan interest to MBS holders	4 for sold loans 0 otherwise	
MF	Months to Foreclosure: number of missed payments through completion of foreclosure	13 months	Average value of BLE data
MR	Months in REO	7 months	Average value of BLE data
F	Foreclosure Costs as a decimal fraction of Defaulted UPB	0.037	Average of historical data from Enterprise loans, 1979–1999
R	REO Expenses as a decimal fraction of Defaulted UPB	0.163	Average of historical data from Enterprise loans, 1979–1999

TABLE 3–22—LOAN GROUP INPUTS FOR SINGLE FAMILY GROSS LOSS SEVERITY—Continued

Variable	Description	Value	Source
RR	Recovery Rate for Defaulted loans in the BLE, as a percent of predicted house price using HPI (decimal)	0.61	Average value of BLE data

See also Table 3–35, Coefficients for Single Family Default and Prepayment Explanatory Variables.

3.1.4.2 Multifamily Loan Performance

TABLE 3–23—LOAN GROUP INPUTS FOR MULTIFAMILY DEFAULT AND PREPAYMENT

Variable	Description	Value	Source
OE	Operating expenses as a share of gross potential rents	0.472	Average ratio of operating expenses to gross rents, 1970–1992 Institute for Real Estate Management annual surveys of apartments.
RVR_o	Initial rental vacancy rate	0.0623	National average vacancy rate, 1970–1995, from census surveys.

TABLE 3–24—LOAN GROUP INPUTS FOR MULTIFAMILY GROSS LOSS SEVERITY

Variable	Description	Value	Source
MQ	Time during which delinquent loan interest is passed-through to MBS holders	4 for sold loans 0 otherwise	
RHC	Net REO holding costs as a decimal fraction of Defaulted UPB	0.1333	UPB-weighted average, Freddie Mac ''old book'' REO through 1995.
MF	Time from Default to completion of foreclosure (REO acquisition)	18 months	UPB-weighted average, Freddie Mac ''old book'' REO through 1995.
MR	Months from REO acquisition to REO disposition	13 months	UPB-weighted average, Freddie Mac ''old book'' REO through 1995.
RP	REO proceeds as a decimal fraction of Defaulted UPB	0.5888	UPB-weighted average, Freddie Mac ''old book'' REO through 1995.

See also Table 3–39, Explanatory Variable Coefficients for Multifamily Default.

3.2 Commitments

3.2.1 Commitments Overview

The Enterprises make contractual commitments to purchase or securitize mortgages. The Stress Test provides for deliveries of mortgages into the commitments that exist at the start of the Stress Period. These mortgages are grouped into ''Commitment Loan Groups'' that reflect the characteristics of the mortgages that were originated in the six months preceding the start of the Stress Period and securitized by the Enterprise, except that they are assigned coupon rates consistent with the projected delivery month in each interest rate scenario. These Commitment Loan Groups are added to the Enterprise's sold portfolio and the Stress Test projects their performance during the Stress Period. In the down-rate scenario, the Stress Test provides that 100 percent of the mortgages specified in the commitments are delivered within the first three months. In the up-rate scenario, 75 percent are delivered within the first six months.

3.2.2 Commitments Inputs

The Stress Test uses two sources of data to determine the characteristics of the mortgages delivered under commitments:

- Information from the Enterprises on the characteristics of loans originated and delivered to the Enterprises in the six months preceding the start of the Stress Period, broken out into four categories, scaled by the dollar value of commitments outstanding at the start of the Stress Period;
- Interest Rate series generated by the Interest Rates component of the Stress Test.

3.2.2.1 Loan Data

[a] The Enterprises report Commitment Loan Group categories based on the following product type characteristics of securitized single family loans originated and delivered during the six months prior to the start of the Stress Test:

- 30-year fixed-rate
- 15-year fixed-rate
- One-year CMT ARM
- Seven-year balloon

[b] For each Commitment Loan Group category, the Enterprises report the same information as in section 3.6 for Whole Loan groups with the following exceptions:

- Amortization term and remaining term are set to those appropriate for newly originated loans
- Unamortized balances are set to zero
- The House Price Growth Factor is set to one
- Age is set to zero
- Any credit enhancement coverage other than mortgage insurance is not reported.

[c] For each Commitment Loan Group category, the Enterprises report the Starting UPB defined as follows:

$$\text{Starting UPB} = \begin{bmatrix} \text{Total dollar amount} \\ \text{of Commitments} \\ \text{Outstanding} \end{bmatrix} \times \begin{bmatrix} \dfrac{\text{Starting UPB for the Commitment Loan Group Category}}{\text{Total Starting UPB for all Commitment Loan Group Categories}} \end{bmatrix}$$

3.2.2.2 Interest Rate Data

The Stress Test uses the following Interest Rate series, generated from section 3.3, Interest Rates, of this Appendix, for the first 12 months of the Stress Period:

- One-year Constant Maturity Treasury yield (CMT)
- Conventional mortgage rate (30-year fixed rate)
- 15-year fixed-rate mortgage rate
- Seven-year balloon mortgage rate.

3.2.3 Commitments Procedures

[a] Determine Commitment Loan Groups from the Commitment Loan Group categories as follows:

1. Divide each category into one subcategory for each delivery month. Three subcategories are created in the down-rate scenario and six in the up-rate scenario.

2. Calculate the total starting UPB for each subcategory as follows:

$$\text{Subcategory Starting UPB} = \left[\begin{array}{c}\text{Starting UPB for} \\ \text{Commitment Loan} \\ \text{Group Category}\end{array}\right] \times \text{MDP}$$

Where: MDP is taken from Table 3–25.

TABLE 3–25—MONTHLY DELIVERIES AS A PERCENTAGE OF COMMITMENTS OUTSTANDING (MDP)

Delivery Month (DM)	Up-Rate Scenario MDP	Down-Rate Scenario MDP
1	18.75%	62.50%
2	18.75%	25.00%
3	12.50%	12.50%
4	12.50%	0.00%
5	6.25%	0.00%
6	6.25%	0.00%
Total	75%	100%

3. Set the Initial Mortgage Interest Rate for each subcategory using the interest rate series consistent with the commitment product type. For fixed rate loans, this rate = INDEX_{DM}. For ARM loans, the Initial Mortgage Interest Rate and the Mortgage Interest Rate at Origination are equal and set to $\text{INDEX}_{\text{DM}-\text{LB}-1}$ +MARGIN, where LB (Lookback Period) and MARGIN for ARM commitment loan groups come from the RBC Report. Calculate the mortgage payment amount consistent with the Initial rate and amortizing term.

[b] Cash flows for the commitment loan groups, broken down by subcategory corresponding to assumed month of delivery to the Enterprises, are to be generated using the same procedures as contained in section 3.6, Whole Loan Cash Flows, of this Appendix, except as follows:

1. For purposes of generating cash flows, treat each commitment loan subcategory as if the loans were newly originated and delivered just prior to the start of the Stress Test (that is, treat them as if mortgage age at time zero, A_0, were zero).
2. Wherever section 3.6, Whole Loan Cash Flows, of this Appendix, refers to interest rate or discount rate adjustments, add Delivery Month (DM) to the Interest Rate or discount rate monthly counter, where constant DM $\in$ [1,2,3,4,5,6] refers to the number of months into the Stress Test that the commitment subcategory is assumed to be delivered to the Enterprise. For example,
   a. Section 3.6.3.3.3[a]1.b.3) of this Appendix, if m is a rate reset month, then:

$$\text{MIR}_{\text{m}} = \text{INDEX}_{\text{m}-1-\text{LB}+\text{DM}} + \text{MARGIN}$$

   b. Section 3.6.3.4.3.1[a]3.a., of this Appendix,

$$\text{B}_{\text{q}} = 1 \text{ if } \text{MCON}_{\text{m}+\text{DM}} + 0.02 \le \text{MIR}_{\text{m}}$$

   c. Section 3.6.3.4.3.1[a]4., of this Appendix,

$$\text{RS}_{\text{q}} = avg\left(\frac{\text{MIR}_{\text{ORIG}} - \text{MCON}_{\text{m}+\text{DM}}}{\text{MIR}_{\text{ORIG}}}\right)$$

   d. Section 3.6.3.4.3.1[a]5., of this Appendix,

$$\text{YCS}_{\text{q}} = avg\left(\frac{\text{T120Y}_{\text{m}+\text{DM}}}{\text{T12Y}_{\text{m}+\text{DM}}}\right)$$

   e. Section 3.6.3.6.5.1, of this Appendix. Throughout this section replace DR_{m} with $\text{DR}_{\text{m}+\text{DM}}$ wherever it appears.
   f. Section 3.6.3.7.3[a]9.b., of this Appendix. The formula for float income received should replace FER_{m} with $\text{FER}_{\text{m}+\text{DM}}$
3. For purpose of computing LTV_{q} as defined in section 3.6.3.4.3.1[a]2.a., of this Appendix, adjust the quarterly index for the vector of house price growth rates by adding DQ=2 if the loans are delivered in the Stress Test month 6, DQ = 1 if the loans are delivered in Stress Test months 3, 4 or 5, and 0 otherwise. That is, in the LTV_{q} formula:

$$Exp\left(\sum_{k=1}^{q} \text{HPGR}_{k+\text{DQ}}\right)$$

Where:

$$\text{DQ} = int\left(\frac{\text{DM}}{3}\right)$$

4. The note at the end of section 3.6.3.4.3.2[a]5., of this Appendix, should be adjusted to read: for m > 120 − DM, use $\text{MPR}_{120-\text{DM}}$ and $\text{MDR}_{120-\text{DM}}$.
5. Adjust the final outputs for each commitment subcategory by adding DM to each monthly counter, m. That is, the outputs in Table 3–52 and 3–55 should be revised to replace each value's monthly counter of m with the new counter of m + DM, which will modify the description of each to read ''in month m = 1 + DM, ... RM+DM''. (Note that for one variable, PUPB_{m}, the revised counter will range from DM to RM + DM). The revised monthly counters will now correspond to the months of the Stress Test. For values of m under the revised description which are less than or equal to DM, each variable (except Performing UPB) in these two tables should equal zero. For Performing UPB in month DM, the variable will equal the Original UPB for month DM and will equal zero for months less than DM.

3.2.4 Commitments Outputs

[a] The outputs of the Commitment component of the Stress Test include Commitment Loan Groups specified in the same way as loan groups in the RBC Report (*See* section 3.6, Whole Loan Cash Flows, of this Appendix) with two exceptions: mortgage insurance is the only available credit enhancement coverage; and delivery month is added to indicate the month in which these loan groups are added to the sold portfolio. The data for these loan groups allow the Stress Test to project the Default, Prepayment and loss rates and cash flows for loans purchased under commitments for the ten-year Stress Period.

[b] The Commitment outputs also include cash flows analagous to those specified for Whole Loans in section 3.6.4, Final Whole Loan Cash Flow Outputs, of this Appendix, which are produced for each Commitment Loan Group.

3.3 Interest Rates

3.3.1 Interest Rates Overview

[a] The Interest Rates component of the Stress Test projects Constant Maturity Treasury yields as well as other interest rates and indexes (collectively, ''Interest Rates'') that are needed to project mortgage performance and calculate cash flows for mortgages and other financial instruments for each of the 120 months in the Stress Period.

[b] The process for determining interest rates is as follows: first, identify values for the necessary Interest Rates at time zero; second, project the ten-year CMT for each month of the Stress Period as specified in the 1992 Act; third, project the 1-month Treasury yield, the 3-month, 6-month, 1-, 2-, 3-, 5-, 20- and 30-year CMTs; and fourth, project non-Treasury Interest Rates, including the Federal Agency Cost of funds.

[c] In cases where the Stress Test would require interest rates for maturities other than those specifically projected in Table 3–18 of section 3.1.3, Public Data, of this Appendix, the Interest Rates component performs a monthly linear interpolation. In cases where the Stress Test would require an Interest Rate for a maturity greater than the longest maturity specifically projected for that index, the Stress Test would use the longest maturity for that index.

3.3.2 Interest Rates Inputs

The Interest Rates that are input to the Stress Test are set forth in Table 3–18 of section 3.1.3, Public Data, of this Appendix.

3.3.3 Interest Rates Procedures

[a] Produce Interest Rates for use in the Stress Test using the following three steps:

1. Project the Ten-Year CMT as specified in the 1992 Act:
   a. *Down-Rate Scenario.* In the Stress Test, the ten-year CMT changes from its starting level to its new level in equal increments over the first twelve months of the Stress Period, and remains constant at the new level for the remaining 108 months of the Stress Period. The new level of the ten-year CMT in the last 108 months of the down-rate scenario equals the lesser of:
      1) The average of the ten-year CMT for the nine months prior to the start of the Stress Test, minus 600 basis points; or
      2) The average yield of the ten-year CMT for the 36 months prior to the start of the Stress Test, multiplied by 60 percent;

but in no case less than 50 percent of the average for the nine months preceding the start of the Stress Period.

   b. *Up-Rate Scenario.* In the Stress Test, the ten-year CMT changes from its starting level to its new level in equal increments over the first twelve months of the Stress Period, and remains at the new level for the remaining 108 months of the Stress Period. The new level of the ten-year CMT in the last 108 months of the up-rate scenario is the greater of:

1) The average of the ten-year CMT for the nine months prior to the start of the Stress Test, plus 600 basis points; or
2) The average of the ten-year CMT for the 36 months prior to the start of the Stress Test, multiplied by 160 percent;

but in no case greater than 175 percent of the average of the ten-year CMT for the nine months preceding the start of the Stress Period.

2. Project the 1-month Treasury and other CMT yields:

a. *Down-Rate Scenario.* For the down-rate scenario, the new value of each of the other Treasury and CMT yields for the last 108 months of the Stress Test is calculated by multiplying the ten-year CMT by the appropriate ratio from Table 3–26. For the first 12 months of the Stress Period, the other rates are computed in the same way as the ten-year CMT, i.e. from their time zero levels. Each of the other CMTs changes in equal steps in each of the first twelve months of the Stress Period until it reaches the new level for the remaining 108 months of the Stress Test.

TABLE 3–26—CMT RATIOS TO THE TEN-YEAR CMT [1]

1 MO / 10 YR	0.68271
3 MO / 10 YR	0.73700
6 MO / 10 YR	0.76697
1 YR / 10 YR	0.79995
2 YR / 10 YR	0.86591
3 YR / 10 YR	0.89856
5 YR / 10 YR	0.94646
20 YR / 10 YR	1.06246
30 YR / 10 YR	1.03432

[1] Source: calculated over the period from May, 1986, through April, 1995.

b. *Up-Rate Scenario.* In the up-rate scenario, all other Treasury and CMT yields are equal to the ten-year CMT in the last 108 months of the Stress Test. Each of the other yields changes in equal increments over the first twelve months of the Stress Test until it equals the ten-year CMT.

3. Project Non-Treasury Interest Rates:

a. *Non-Treasury Rates.* For each of the non-Treasury interest rates with the exception of mortgage rates, rates during the Stress Test are computed as a proportional spread to the nearest maturity Treasury yield as given in Table 3–27. The proportional spread is the average over the two years prior to the start of the Stress Test, of the difference between the non-Treasury rate and the comparable maturity Treasury yield divided by that Treasury yield. For example, the three month LIBOR proportional spread would be calculated as the two year average of the ratio:

$$\frac{\left(\begin{array}{c}\text{3-month LIBOR minus}\\ \text{3-month Treasury}\end{array}\right)}{\text{3-month Treasury}}$$

During the Stress Test, the 3-month LIBOR rate is projected by multiplying the 3-month Treasury yield by 1 plus this average proportional spread.

b. *Mortgage Rates.* Mortgage interest rates are projected as described in this section for other non-Treasury interest rates, except that an average of the additive, not proportional, spread to the appropriate Treasury interest rate is used. For example, the 30-year Conventional Mortgage Rate spread is projected as the average, over the two years preceding the start of the Stress Test, of: (Conventional Mortgage Rate minus the ten-year CMT). This spread is then added to the ten-year CMT for the 120 months of the Stress Test to obtain the projected Conventional Mortgage Rate.

TABLE 3–27—NON-TREASURY INTEREST RATES

Mortgage Rates	Spread Based on
15-year Fixed-rate Mortgage Rate	10-year CMT
30-year Conventional Mortgage Rate	10-year CMT
7-year Balloon Mortgage Rate	(computed from Conventional Mortgage Rate)
Other Non-Treasury Interest Rates	
Overnight Fed Funds	1-month Treasury Yield
7-day Fed Funds	1-month Treasury Yield
1-month LIBOR	1-month Treasury Yield
1-month Federal Agency Cost of Funds	1-month Treasury Yield
3-month LIBOR	3-month CMT
3-month Federal Agency Cost of Funds	3-month CMT
PRIME	3-month CMT
6-month LIBOR	6-month CMT
6-month Federal Agency Cost of Funds	6-month CMT
6-month Fed Funds	6-month CMT
FHLB 11th District Cost of Funds	1-year CMT
12-month LIBOR	1-year CMT
1-year Federal Agency Cost of Funds	1-year CMT
2-year Federal Agency Cost of Funds	2-year CMT
3-year Federal Agency Cost of Funds	3-year CMT
5-year Federal Agency Cost of Funds	5-year CMT
10-year Federal Agency Cost of Funds	10-year CMT

TABLE 3–27—NON-TREASURY INTEREST RATES—Continued

Mortgage Rates	Spread Based on
30-year Federal Agency Cost of Funds	30-year CMT

c. *Enterprise Borrowing Rates.* In the Stress Test, the Federal Agency Cost of Funds Index is also called the Enterprise Cost of Funds during the Stress Period.

3.3.4 Interest Rates Outputs

Interest Rate outputs are monthly values for: the projected ten points on the Treasury yield curve (1-month, 3-month, 6-month, 1-year, 2-year, 3-year, 5-year, 10-year, 20-year and 30-year); the 21 non-Treasury rates contained in Table 3–27; and the nine points on the Enterprise Cost of Funds curve.

3.4 Property Valuation

3.4.1 Property Valuation Overview

[a] The Property Valuation component applies inflation adjustments to the single family house price growth rates and multifamily rent growth rates that are used to determine single family property values and multifamily current debt-service coverage ratios during the up-rate scenario, as required by the 1992 Act.

[b] Single family house price growth rates during the 120 months of the Stress Test are calculated from the HPI series for the West South Central Census Division for the years 1984–1993, as derived from OFHEO's Third Quarter, 1996 HPI Report. The West South Central Census Division includes Texas and all of the Benchmark states except Mississippi. This series is applied to single family loans nationwide during the Stress Test because the 1992 Act applies a regional loss experience (the BLE) to the entire nation. In contrast, house prices are brought forward to the start of the Stress Test based on local Census Division HPI values available at the start of the Stress Test.

[c] Multifamily rent growth rates during the 120 months of the Stress Test are computed using a population-weighted average of the monthly growth of the Rent of Primary Residence component of the Consumer Price Index-Urban, which is generated by the U.S. Department of Labor Bureau of Labor Statistics. The metropolitan areas used for this computation are the Dallas/Ft. Worth CMSA, the Houston/Galveston/Brazoria CMSA, and the New Orleans MSA.

[d] Multifamily rental vacancy rates during the 120 months of the Stress Test are computed using a population-weighted average of annual rental vacancy rates from the U.S. Department of Commerce, Bureau of the Census' Housing Vacancy Survey. The metropolitan areas used for this computation are the Dallas, Houston and Fort Worth PMSAs and the San Antonio, New Orleans and Oklahoma City MSAs.

[e] *Inflation adjustment.* In the up-rate scenario, if the ten-year CMT rises more than 50 percent above the average yield during the nine months preceding the Stress Period, rent and house price growth rates are adjusted to account for inflation as required by the 1992 Act. The single family House Price Growth Rates and the multifamily Rent Growth Rates are increased by the amount by which the ten-year CMT exceeds 50 percent of its annualized monthly yield averaged over the nine months preceding the Stress Test. The inflation adjustment is applied only in the last 60 months of the Stress Period.

3.4.2 Property Valuation Inputs

The inputs required for the Property Valuation component are set forth in Table 3–28.

TABLE 3–28—PROPERTY VALUATION INPUTS

Variable	Description	Source
$CMT10_m$	10-year CMT yield for months m = 1...20 of the Stress Test	section 3.3, Interest Rates
$ACMT_0$	Unweighted nine-month average of the ten-year CMT yield for the nine months immediately preceding the Stress Test. (Monthly rates are unweighted monthly averages of daily rates, bond equivalent yield)	section 3.3, Interest Rates
$HHPGR_q^{HSP}$	Quarterly single family historical house price growth rates computed from the HPI series for the Benchmark region and time period, unadjusted for inflation. The specific series is the West South Central Census Division for the years 1984–1993, as reported in OFHEO's Third Quarter, 1996 HPI Report.	Table 3–19 of section 3.1.3, Public Data.
RG_m^{HSP}	Multifamily Rent Growth Rates for months m = 1...120 of the Benchmark region and time period, unadjusted for inflation	Table 3–20 of section 3.1.3, Public Data.
RVR_m^{HSP}	Multifamily Rental Vacancy Rates for months m = 1...120 of the Benchmark region and time period	Table 3–20 of section 3.1.3, Public Data.

3.4.3 Property Valuation Procedures for Inflation Adjustment

[a] Calculate inflation-adjusted House Price Growth Rates and Rent Growth Rates using the following six steps:

1. Calculate the Inflation-Adjustment (IA) for the up-rate stress test, as follows:

$$\mathrm{IA} = max\left[\begin{matrix}\mathrm{CMT10}^{\mathrm{MAX}} \\ -\left(1.50 \times \mathrm{ACMT}_0\right), 0\end{matrix}\right]$$

Where:

$CMT10^{MAX}$ is the value of the ten-year CMT during the last 108 months of the up-rate Stress Test.

2. The Inflation Adjustment (IA) is compounded annually over 9 years and 2 months (110 months) to obtain the Cumulative Inflation Adjustment (CIA) according to the following equation:

$$\mathrm{CIA} = \left(1 + \mathrm{IA}\right)^{\frac{110}{12}}$$

3. For single family house prices, convert the CIA to continuously compounded quarterly factors, the Quarterly House Price Growth Adjustments ($QHGA_q$), which take on positive values only in the last twenty quarters of the Stress Test, using:

$$\mathrm{QHGA_q} = \frac{ln(\mathrm{CIA})}{20} \text{ for q = 21…40}$$

in the up-rate Stress Test

$$\mathrm{QHGA_q} = 0, \text{ otherwise}$$

4. For Multifamily rent growth, the CIA is converted to discrete monthly factors or Monthly Rent Growth Adjustments ($MRGA_m$), and is applied only in the last 60 months of the Stress Test in the up-rate scenario, as follows:

$$MRGA_m = \left[(CIA)^{\frac{1}{60}} - 1 \right] \text{ for } m = 61...120$$

in the up-rate Stress Test

$$MRGA_m = 0, \text{ otherwise}$$

5. Calculate the inflation-adjusted House Price Growth Rates ($HPGR_q$), used in updating single family house prices during the Stress Test:

$$HPGR_q = HHPGR_q^{HSP} + QHGA_q$$

6. Calculate inflation-adjusted Rent Growth Rates (RGR_m), used in updating Multifamily debt-service coverage ratios during the Stress Test:

$$RGR_m = RG_m^{HSP} + MRGA_m$$

3.4.4 Property Valuation Outputs

[a] The outputs of the Property Valuation component of the Stress Test are set forth in Table 3–29.

TABLE 3–29—PROPERTY VALUATION OUTPUTS

Variable	Description
$HPGR_q$	House price growth rates for quarters 1...40 of the Stress Test, adjusted for inflation, if applicable.
RGR_m	Multifamily Rent Growth Rates for months m = 1...120 of the Stress Test, adjusted for inflation, if applicable.
RVR_m	Multifamily Rental Vacancy Rates for months m = 1...120 of the Stress Test.

[b] Inflation-adjusted House Price Growth Rates ($HPGR_q$) are inputs to the Single Family Default and Prepayment component of the Stress Test (*see* section 3.6.3.4, of this Appendix). Inflation-adjusted Rent Growth Rates (RGR_m) and Rental Vacancy Rates (RVR_m) are inputs to the Multifamily Default and Prepayment component (*see* section 3.6.3.5, of this Appendix).

3.5 Counterparty Defaults

3.5.1 Counterparty Defaults Overview

The Counterparty Defaults component of the Stress Test accounts for the risk of default by credit enhancement and derivative contract counterparties, corporate securities, municipal securities, and mortgage-related securities. The Stress Test recognizes five rating categories (‘‘AAA’’, ‘‘AA’’, ‘‘A’’, ‘‘BBB’’, and ‘‘Below BBB and Unrated’’) and establishes appropriate credit loss factors that are applied during the Stress Period. Securities rated below BBB are treated as unrated securities, unless OFHEO determines to specify a different treatment upon a showing by an Enterprise that a different treatment is warranted.

3.5.2 Counterparty Defaults Input

For counterparties and securities, information on counterparty type and the lowest public rating of the counterparty is required. The Stress Test uses credit ratings issued by Nationally Recognized Statistical Rating Organizations (‘‘NRSROs’’) to assign rating categories to counterparties and securities. If a counterparty or security has different ratings from different rating agencies, i.e., a ‘‘split rating,’’ or has a long-term rating and a short-term rating, then the lower rating is used.

3.5.3 Counterparty Defaults Procedures

[a] Apply the following three steps to determine maximum haircuts:

1. *Identifying Counterparties.* The Stress Test divides all sources of credit risk other than mortgage default into two categories—(1) derivative contract counterparties and (2) non-derivative contract counterparties and instruments. Non-derivative contract counterparties and instruments include mortgage insurance (MI) counterparties, seller-servicers, mortgage-related securities such as mortgage revenue bonds (MRBs) and private label REMICS, and nonmortgage investments such as corporate and municipal bonds and asset-backed securities (ABSs).
2. *Classify Rating Categories.*
   a. Stress Test rating categories are defined as set forth in Table 3–30. Organizations frequently apply modifiers (numerical, plus, minus) to the generic rating classifications. In order to determine the correct mapping, ignore these modifiers except as noted in Table 3–30.

TABLE 3–30—RATING AGENCIES MAPPINGS TO OFHEO RATINGS CATEGORIES

OFHEO Ratings Category	AAA	AA	A	BBB	Below BBB and Unrated
Standard & Poor's Long-Term	AAA	AA	A	BBB	Below BBB and Unrated
Fitch Long-Term	AAA	AA	A	BBB	Below BBB and Unrated
Moody's Long-Term	Aaa	Aa	A	Baa	Below Baa and Unrated
Standard & Poor's Short-Term	A–1+	A–1	A–2	A–3	Below A–3 and Unrated
Fitch Short-Term	F–1+	F–1	F–2	F–3	Below F–3 and Unrated
Moody's Short-Term [1]	P–1	P–1	P–2	P–3	Below P–3 and Unrated
Fitch Bank Ratings	A	B	C	D	E

[1] Any short-term rating that appears in more than one OFHEO category column is assigned the lower OFHEO rating category.

   b. The Stress Test also includes a ratings classification called cash. This includes cash equivalents as defined in FAS 95, Government securities, and securities of the reporting Enterprise.
   c. Unrated, unsubordinated obligations issued by Government Sponsored Enterprises other than the reporting Enterprise are treated as AAA. Unrated seller-servicers are treated as BBB.
3. *Determine Maximum Haircuts.* The Stress Test specifies the Maximum Haircut (i.e., the maximum reduction applied to cash flows during the Stress Test to reflect the default of counterparties or securities) by rating category and counterparty type as shown in Table 3–31. Haircuts for the Below BBB and Unrated category are applied fully starting in the first month of the Stress Test. For nonmortgage instruments, Haircuts for the Below BBB and Unrated category are applied to 100 percent of the principal balance and interest due on the date of the first cash flow. For other categories, Haircuts are phased in linearly over the first 60 months of the Stress Test. The Maximum Haircut is applied in months 60 through 120 of the Stress Period.

TABLE 3–31—STRESS TEST MAXIMUM HAIRCUT BY RATINGS CLASSIFICATION

Ratings Classification	Derivative Contract Counterparties	Non-Derivative Contract Counterparties or Instruments	Number of Phase-in Months
Cash	0%	0%	N/A
AAA	2%	5%	60
AA	4%	15%	60
A	8%	20%	60
BBB	16%	40%	60
Below BBB and Unrated	100%	100%	1

3.5.4 Counterparty Defaults Outputs

The Maximum Haircut for a given Counterparty Type and Rating Classification is used in section 3.6, Whole Loan Cash Flows, section 3.7, Mortgage-Related Securities Cash Flows, and section 3.8, Nonmortgage Instrument Cash Flows, of this Appendix.

3.6 Whole Loan Cash Flows

3.6.1 Whole Loan Cash Flows Overview

[a] *Loan Aggregation.* In the Stress Test calculations (except as described in section 3.6.3.6.4, Mortgage Credit Enhancement, of this Appendix), individual loans having similar characteristics are aggregated into Loan Groups as described in section 3.1.2.1, Whole Loan Inputs, of this Appendix (RBC Report). All individual loans within a Loan Group are considered to be identical for computational purposes. In the discussions in this section, quantities described as ''loan level'' will actually be computed at the Loan Group level.

[b] *Loan Participations.* In some cases, an Enterprise may hold only a *pari passu* fractional ownership interest in a loan. This interest is referred to as a participation, and is specified by the ownership percentage held by the Enterprise (the participation percentage). In such cases, the Unpaid Principal Balance (UPB) and Mortgage Payment reported in the RBC Report will be only the Enterprise's participation percentage of the loan's actual UPB and Mortgage Payment. The actual UPB is not explicitly used in the calculations described in this section 3.6 but it is used in the creation of the RBC Report.

[c] *Retained Loans vs. Sold Loans.* The Stress Test models cash flows from single family and multifamily mortgage loans that are held in portfolio (Retained Loans) and loans that are pooled into Mortgage-Backed Securities (MBSs) that are sold to investors and guaranteed by the Enterprises (Sold Loans). Together, Retained Loans and Sold Loans are referred to as ''Whole Loans.'' The treatment of cash flows for loans not guaranteed by the Enterprises, e.g., loans backing GNMA Certificates and private label MBSs and REMICs, is discussed in section 3.7, Mortgage-Related Securities Cash Flows, of this Appendix.

[d] *Repurchased MBSs.* From time to time an Enterprise may repurchase all or part of one of its own previously issued single-class MBSs for its own securities portfolio. At an Enterprise's option, these ''Repurchased MBSs'' may be reported with the underlying Whole Loans for computation in this section 3.6 rather than in section 3.7, Mortgage-Related Securities Cash Flows, of this Appendix. In such cases, the Enterprise will report the underlying Whole Loans as sold loans, along with the appropriate Fraction Repurchased and any security unamortized balances associated with the purchase of the MBS (not with the original sale of the underlying loans, which unamortized balances are reported separately).

[e] *Sources of Enterprise Whole Loan Cash Flows.* For Retained Loans, the Enterprises receive all principal and interest payments on the loans, except for a portion of the interest payment retained by the servicer as compensation (the Servicing Fee). For Sold Loans, the Enterprises receive Guarantee Fees and Float Income. Float Income is the earnings on the investment of loan principal and interest payments (net of the Servicing Fee and Guarantee Fee) from the time these payments are received from the servicer until they are remitted to security holders. The length of this period depends on the security payment cycle (the remittance cycle). For both retained and sold loans, the Enterprises retain 100 percent of their credit losses and experience amortization of discounts as income and amortization of premiums as expense. For Repurchased MBSs, the Enterprise receives the Fraction Repurchased of the cash flows it remits to investors, and retains 100 percent of the Credit Losses, the Guarantee Fee and the Float Income. *See* section 3.6.3.7, Stress Test Whole Loan Cash Flows and section 3.6.3.8, Whole Loan Accounting Flows, of this Appendix.

[f] *Required Inputs.* The calculation of Whole Loan cash flows requires mortgage Amortization Schedules, mortgage Prepayment, Default and Loss Severity rates, and Credit Enhancement information. The four mortgage performance components of the Stress Test are single family Default and Prepayment, single family Loss Severity, multifamily Default and Prepayment, and multifamily Loss Severity. Mortgage Amortization Schedules are computed from input data in the RBC Report. (For ARMs, selected interest rate indexes from section 3.3, Interest Rates, of this Appendix, are also used.) Prepayment and Default Rates are computed by combining explanatory variables and weighting coefficients according to a set of logistic equations. The explanatory variables are computed from the mortgage Amortization Schedule and external economic variables such as Interest Rates (section 3.3, Interest Rates, of this Appendix), historical house-price indexes (HPIs) or rental-price indexes (RPIs), and Stress Period HPI growth rate, RPI and Vacancy Rate (RVR) series from section 3.4, Property Valuation, of this Appendix. The weighting coefficients determine the relative importance of the different explanatory variables, and are estimated from a statistical analysis of data from the Benchmark Loss region and time period as described in section 1, Identification of the Benchmark Loss Experience, of this Appendix. Mortgage Amortization information is also combined with HPI, RPI and VR series to determine Gross Loss Severity rates, which are offset by Credit Enhancements. Finally, the Amortization Schedules, Default and Prepayment rates and Net Loss Severity rates are combined to produce Stress Test Whole Loan Cash Flows to the Enterprises for each Loan Group, as well as amortization of any discounts, premiums and fees.

[g] *Specification of Mortgage Prepayment.* Mortgages are assumed to prepay in full. The model makes no specific provision for partial Prepayments of principal (curtailments).

[h] *Specification of Mortgage Default and Loss.* Mortgage Defaults are modeled as follows: Defaulting loans enter foreclosure after a number of missed payments (MQ, Months in Delinquency), and are foreclosed upon several months later. Months in Foreclosure (MF) is the total number of missed payments through foreclosure. Upon completion of foreclosure, the loan as such ceases to exist and the property becomes Real Estate Owned by the lender (REO). Foreclosure expenses are paid and MI proceeds received when foreclosure is completed. After several more months (MR, Months in REO), the property is sold, REO expenses are paid, and sales proceeds and other credit enhancements are received. These timing differences are not modeled explicitly in the cash flows, but their economic effect is taken into account by calculating the present value of the Default-related cash flows back to the initial month of Default.

[i] *Combining Cash Flows from Scheduled Payments, Prepayments and Defaults.* Aggregate Whole Loan Cash Flows, adjusted for the effects of mortgage performance, are based on the following conceptual equation,

which is made more explicit in the calculations in the sections specified in section 3.6.2 of this Appendix:

$$\begin{bmatrix}\text{Aggregate Cash Flows from} \\ \text{Whole Loans that Default} \\ \text{and Prepay at Rates that} \\ \text{vary in each month m}\end{bmatrix} =$$

$$\begin{bmatrix} \begin{pmatrix}\text{scheduled Mortgage} \\ \text{Payment}\end{pmatrix} \times \begin{pmatrix}\text{fraction of loans that remain} \\ \text{on original schedule}\end{pmatrix} \\ \text{plus} \\ \begin{pmatrix}\text{entire loan UPB plus} \\ \text{final interest payment}\end{pmatrix} \times \begin{pmatrix}\text{fraction of loans that} \\ \text{Prepay in month m}\end{pmatrix} \\ \text{plus} \\ \begin{pmatrix}\text{present value of Default-related} \\ \text{receipts minus expenses}\end{pmatrix} \times \begin{pmatrix}\text{fraction of loans that} \\ \text{Default in month m}\end{pmatrix} \end{bmatrix}$$

3.6.2 Whole Loan Cash Flows Inputs

Inputs for each stage of the Whole Loan Cash Flows calculation are found in the following sections:

- Section 3.6.3.3.2, Mortgage Amortization Schedule Inputs
- Section 3.6.3.4.2, Single Family Default and Prepayment Inputs
- Section 3.6.3.5.2, Multifamily Default and Prepayment Inputs
- Section 3.6.3.6.2.2, Single Family Gross Loss Severity Inputs
- Section 3.6.3.6.3.2, Multifamily Gross Loss Severity Inputs
- Section 3.6.3.6.4.2, Mortgage Credit Enhancement Inputs
- Section 3.6.3.7.2, Stress Test Whole Loan Cash Flow Inputs
- Section 3.6.3.8.2, Whole Loan Accounting Flows Inputs, of this Appendix

3.6.3 Whole Loan Cash Flows Procedures

3.6.3.1 Timing Conventions

[a] *Calculations are monthly.* The Stress Test operates monthly, with all events of a given type assumed to take place on the same day of the month. For mortgages, unless otherwise specified, all payments and other mortgage-related cash flows that are due on the first day of the month are received on the fifteenth. Biweekly loans are mapped into their closest term-equivalent monthly counterpart.

[b] *''Time Zero'' for Calculations.* Time Zero refers to the beginning of the Stress Test. For example, if the 2Q2000 Stress Test uses Enterprise Data as of June 30, ''month zero'' represents conditions as of June 30, the Stress Period begins July 1, and July 2000 is month one of the Stress Test. In this document, UPB_0 is the Unpaid Principal Balance of a loan immediately prior to (as of) the start of the Stress Test, i.e. as reported by the Enterprise in the RBC Report. Origination refers to the beginning of the life of the loan, which will be prior to the start of the Stress Test for all loans except those delivered later under Commitments, for which Origination refers to the delivery month (*See* section 3.2, Commitments, of this Appendix).

[c] *Definition of Mortgage Age.* The Mortgage Age at a given time is the number of scheduled mortgage payment dates that have occurred prior to that time, whether or not the borrower has actually made the payments. Prior to the first payment date, the Mortgage Age would be zero. From the first payment date until (but not including) the second loan payment date, the Mortgage Age would be one. The Mortgage Age at Time Zero (A_0) is thus the number of scheduled loan payment dates that have occurred prior to the start of the Stress Test. The scheduled payment date for all loans is assumed to be the first day of each month; therefore, the Mortgage Age will be A_1 on the first day of the Stress Test (except for Commitments that are delivered after the start of the Stress Test).

[d] *Interest Rate Setting Procedure.* Mortgage interest is due in arrears, i.e., on the first day following the month in which it is accrued. Thus, a payment due on the first day of month m is for interest accrued during the *prior* month. For example, for Adjustable Rate Mortgages (ARMs) the Mortgage Interest Rate (MIR_m) applicable to the July reset is set on the first day of June, and is generally based on the May or April value of the underlying Index, as specified in the loan terms. This Lookback Period (LB) is specified in the Stress Test as a period of one or two months, respectively. Thus, PMT_m will be based on MIR_m, which is based on $INDEX_{m-1-LB}$.

[e] *Prepayment Interest Shortfall.* In some remittance cycles, the period between an Enterprise's receipt of Prepayments and transmittal to investors exceeds a full month. In those cases, the Enterprise must remit an additional month's interest (at the Pass-Through Rate) to MBS investors. *See* section 3.6.3.7.3, Stress Test Whole Loan Cash Flow Procedures, of this Appendix.

[f] *Certain Calculations Extend Beyond the End of the Stress Test.* Even though the Stress Test calculates capital only through the ten year Stress Period, certain calculations (for example, the level yield amortization of discounts, premiums and fees, as described in section 3.10, Operations, Taxes, and Accounting, of this Appendix) require cash flows throughout the life of the instrument. For such calculations in the Stress Test, the conditions of month 120 are held constant throughout the remaining life of the instrument: specifically, Interest Rates (which are already held constant for months 13 through 120), Prepayment and Default rates for months m > 120 are taken to be equal to their respective values in month 120.

3.6.3.2 Payment Allocation Conventions

3.6.3.2.1 Allocation of Mortgage Interest

[a] *Components of Mortgage Interest.* The interest portion of the Mortgage Payment is allocated among several components. For all Whole Loans, a Servicing Fee is retained by the servicer. For Sold Loans, the Enterprise retains a Guarantee Fee. An additional amount of interest (Spread) [1] may be deposited into a Spread Account to reimburse potential future credit losses on loans covered by this form of Credit Enhancement, as described further in section 3.6.3.6.4, Mortgage Credit Enhancement, of this Appendix. The remaining interest amount is either retained by the Enterprise (Net Yield on Retained Loans) or passed through to MBS investors (Pass-Through Interest on Sold Loans).

[b] *Effect of Negative Amortization.* If the Mortgage Payment is contractually limited to an amount less than the full amount accrued (as may be the case with loans that permit Negative Amortization), then the Servicing Fee, the Guarantee Fee and the spread are paid in full, and the shortfall is borne entirely by the recipient of the Net Yield or Pass-Through Interest.

[c] *Effect of Variable Rates.* For ARMs, the Servicing Fee, Guarantee Fee and Spread rates are taken to be constant over time, as they are for Fixed Rate Loans. Thus in the Stress Test the Mortgage Interest Rate and the Net Yield or Pass-through Rate will change simultaneously by equal amounts. All other details of the rate and payment reset mechanisms are modeled in accordance with the contractual terms using the inputs specified in section 3.6.3.3.2, Mortgage Amortization Schedule Inputs, of this Appendix.

3.6.3.2.2 Allocation of Mortgage Principal

[a] Scheduled Principal is that amount of the mortgage payment that amortizes principal. For calculational purposes, when a loan prepays in full the amount specified in the Amortization Schedule is counted as Scheduled Principal, and the rest is Prepayment Principal. For a Balloon Loan, the final Balloon Payment includes the remaining UPB, all of which is counted as Scheduled Principal.

[b] Mortgages that prepay are assumed to prepay in full. Partial Prepayments (curtailments) are not modeled.

[c] Any loan that does not prepay or Default remains on its original Amortization Schedule.

3.6.3.3 Mortgage Amortization Schedule

3.6.3.3.1 Mortgage Amortization Schedule Overview

[a] The Stress Test requires an Amortization Schedule for each Loan Group. A mortgage is paid down, or amortized over time, to the extent that the contractual mortgage payment exceeds the amount required to cover interest due.

[b] *Definitions.*

1. *Fully Amortizing Loans.* The Amortization Schedule for a mortgage with age A_0 at the beginning of the Stress Test is generated using the starting UPB (UPB_0), the Remaining Term to Maturity (RM), the remaining Amortization Term ($AT-A_0$), the remaining Mortgage

[1] The spread may or may not be embedded in the recorded Servicing Fee.

Payments (PMT_m for m = 1...RM) and Mortgage Interest Rates (MIR_m for m = 1...RM). The Amortization Schedule is generated by repeating the following three steps iteratively until the UPB is zero:

a. Interest Due = UPB × Mortgage Interest Rate
b. Principal Amortization = Payment − Interest Due
c. Next period's UPB = UPB − Principal Amortization

2. *Balloon Loans.* A Balloon Loan matures prior to its Amortizing Term, i.e. before the UPB is fully amortized to zero. Computationally, $AT - A_0 > RM$, usually by at least 180 months. In order that $UPB_{RM} = 0$, the principal component of the resulting lump sum final payment (the Balloon Payment, equal to UPB_{RM-1}) is counted as Scheduled Principal, not as a Prepayment.

[c] *Special Cases.* In general the UPB of a mortgage decreases monotonically over time, i.e. $UPB_m > UPB_{m+1}$, reaching zero at maturity except for Balloon Loans as described in [b]2. in this section. However, in practice certain exceptions must be handled.

1. *Interest-Only Loans.* Certain loans are interest-only for all or part of their term. The monthly payment covers only the interest due, and the UPB stays constant until maturity (in some cases), in which case a Balloon Payment is due or a changeover date (in other cases) at which time the payment is recast so that the loan begins to amortize over its remaining term. If the loan does not amortize fully over its remaining term, a Balloon Payment will be due at maturity.
2. *Negative Amortization.* For some loans, the UPB may increase for a period of time if the mortgage payment is contractually limited to an amount that is less than the amount of interest due, and the remainder is added to the UPB. At some point, however, the payment must exceed the interest due or else the loan balance will never be reduced to zero. In the calculation, this is permitted to occur only for payment-capped ARMs that contractually specify negative amortization. Certain types of FRMs, notably Graduated Payment Mortgages (GPMs) and Tiered Payment Mortgages (TPMs), also have variable payment schedules that result in negative amortization, but in the Stress Test all such loans are assumed to have passed their negative amortization periods.
3. *Early Amortization.*
   a. If a borrower has made additional principal payments (curtailments or partial prepayments) on a FRM prior to the start of the Stress Test, the contractual mortgage payment will amortize the loan prior to its final maturity, i.e. $UPB_m = 0$ for some m < RM. *This is an acceptable outcome in the Stress Test. Note:* for ARMs, the mortgage payment is recalculated, and thus the amortization schedule is recast to end exactly at m = RM, on each rate or payment reset date.
   b. When this calculation is performed for a fully amortizing FRM using weighted average values to represent a Loan Group, the final scheduled payment may exceed the amount required to reduce the UPB to zero, or the UPB may reach zero prior to month RM. This is because the mortgage payment calculation is nonlinear, and as a result the average mortgage payment is not mathematically guaranteed to amortize the average UPB using the average MIR. This is an acceptable outcome in the Stress Test.
4. *Late Amortization.* According to its contractual terms, the UPB of a mortgage loan must reach zero at its scheduled maturity. The borrower receives a disclosure schedule that explicitly sets forth such an Amortization Schedule. If the characteristics of a mortgage loan representing a Loan Group in the RBC Report do not result in $UPB_{RM} = 0$, it must be for one of three reasons: a data error, an averaging artifact, or an extension of the Amortization Schedule related to a delinquency prior to the start of the Stress Test. In any such case, the Stress Test does not recognize cash flows beyond the scheduled maturity date and models the performing portion of UPB_{RM} in month RM as a credit loss.

[d] *Biweekly Loans.* Biweekly loans are mapped into the FRM category that most closely approximates their final maturity.

[e] *Step-Rate (or "Two-Step") Loans.* Certain loans have an initial interest rate for an extended period of time (typically several years) and then "step" to a final fixed rate for the remaining life of the loan. This final fixed rate may be either a predetermined number or a margin over an index. Such loans can be exactly represented as ARMs with the appropriate Initial Mortgage Interest Rate and Initial Rate Period, Index and Margin (if applicable). If the final rate is a predetermined rate (e.g., 8 percent per annum) then the ARM's Maximum and Minimum Rate should be set to that number. The Rate and Payment Reset Periods should be set equal to the final rate period after the step.

3.6.3.3.2 Mortgage Amortization Schedule Inputs

The inputs needed to calculate the amortization schedule are set forth in Table 3–32:

TABLE 3–32—LOAN GROUP INPUTS FOR MORTGAGE AMORTIZATION CALCULATION

Variable*	Description	Source
	Rate Type (Fixed or Adjustable)	RBC Report
	Product Type (30/20/15-Year FRM, ARM, Balloon, Government, etc.)	RBC Report
UPB_{ORIG}	Unpaid Principal Balance at Origination (aggregate for Loan Group)	RBC Report
UPB_0	Unpaid Principal Balance at start of Stress Test (aggregate for Loan Group)	RBC Report
MIR_0	Mortgage Interest Rate for the Mortgage Payment prior to the start of the Stress Test, or Initial Mortgage Interest Rate for new loans (weighted average for Loan Group) (expressed as a decimal per annum)	RBC Report
PMT_0	Amount of the Mortgage Payment (Principal and Interest) prior to the start of the Stress Test, or first payment for new loans (aggregate for Loan Group)	RBC Report
AT	Original loan Amortizing Term in months (weighted average for Loan Group)	RBC Report
RM	Remaining term to Maturity in months (i.e., number of contractual payments due between the start of the Stress Test and the contractual maturity date of the loan) (weighted average for Loan Group)	RBC Report
A_0	Age *immediately prior to* the start of the Stress Test, in months (weighted average for Loan Group)	RBC Report
Additional Interest Rate Inputs		
GFR	Guarantee Fee Rate (weighted average for Loan Group) (decimal per annum)	RBC Report
SFR	Servicing Fee Rate (weighted average for Loan Group) (decimal per annum)	RBC Report
Additional Inputs for ARMs (weighted averages for Loan Group, except for Index)		

TABLE 3–32—LOAN GROUP INPUTS FOR MORTGAGE AMORTIZATION CALCULATION—Continued

Variable*	Description	Source
$INDEX_M$	Monthly values of the contractual Interest Rate Index	section 3.3, Interest Rates
LB	Look-Back period, in months	RBC Report
MARGIN	Loan Margin (over index), decimal per annum	RBC Report
RRP	Rate Reset Period, in months	RBC Report
	Rate Reset Limit (up and down), decimal per annum	RBC Report
	Maximum Rate (life cap), decimal per annum	RBC Report
	Minimum Rate (life floor), decimal per annum	RBC Report
NAC	Negative Amortization Cap, decimal fraction of UPB_{ORIG}	RBC Report
	Unlimited Payment Reset Period, in months	RBC Report
PRP	Payment Reset Period, in months	RBC Report
	Payment Reset Limit, as decimal fraction of prior payment	RBC Report
IRP	Initial Rate Period, in months	RBC Report
Additional Inputs for Multifamily Loans		
	Interest-only Flag	RBC Report
RIOP	Remaining Interest-only period, in months (weighted average for loan group)	RBC Report

*Variable name is given when used in an equation

3.6.3.3.3 Mortgage Amortization Schedule Procedures

[a] For each Loan Group, calculate a mortgage Amortization Schedule using the inputs in Table 3–32 and the following ten steps. *Note:* Do not round dollar amounts to the nearest penny.)

For months m = 1...RM, calculate quantities for month m based on values from month m − 1 as follows:

1. Calculate current month's Mortgage Interest Rate (MIR_m).
   a. For FRMs: $MIR_m = MIR_0$ for all m = 1 to RM
   b. For ARMs, use the following procedure:
   1) If RRP = PRP then month m is a rate reset month if:

$$\left[A_0 + m - (IRP+1)\right] \textit{ mod } RRP = 0 \quad \text{and} \quad A_0 + m - 1 \geq IRP$$

   2) If RRP ≠ PRP then month m is a rate reset month if either:
   a) $A_0 + m - (IRP + 1) = 0$, or
   b) $[A_0 + m - 1]$ *mod* RRP = 0 and $A_0 + m - 1 \geq IRP$
   3) If m is a rate reset month, then:

$$MIR_m = INDEX_{m-1-LB} + MARGIN,$$

   but not greater than MIR_{m-1} + Rate Reset Limit
   nor less than MIR_{m-1} − Rate Reset Limit
   and in no case greater than Maximum Rate
   and in no case less than Minimum Rate
   4) If month m is not a rate reset month, then $MIR_m = MIR_{m-1}$.
   c. In all cases, $MIR_m = MIR_{120}$ for m > 120, and $MIR_m = 0$ for m > RM.
2. Calculate current month's Payment (PMT_m).
   a. For FRMs:
   1) For Interest-Only Loans, if m = RIOP + 1 then month m is a reset month; recompute PMT_m as described for ARMs in step b.4)b), of this section without applying any payment limit.
   2) $PMT_m = PMT_0$ for all m = 1 to RM
   b. For ARMs, use the following procedure:
   1) For Interest Only Loans, if m = RIOP + 1 then month m is a payment reset month.
   2) If PRP = RRP, then month m is a payment reset month if m is also a rate reset month.
   3) If PRP ≠ RRP then month m is a payment reset month if:

$$\left[A_0 + m - 1\right] \textit{ mod } PRP = 0$$

   4) If month m is a payment reset month, then:
   a) For loans in an Interest-only Period,

$$PMT_m = UPB_{m-1} \times \frac{MIR_m}{12}$$

   b) Otherwise, PMT_m = the amount that will fully amortize the Loan over its remaining Amortizing Term (i.e. $AT - A_o - m+1$ months) with a *fixed* Mortgage Interest Rate equal to MIR_m as determined in Step 1 of this section
   but not greater than $PMT_{m-1} \times (1 +$ Payment Reset Limit Up)
   nor less than $PMT_{m-1} \times (1 -$ Payment Reset Limit Down)
   unless month m is the month following the end of an Unlimited Payment Reset Period, in which case PMT_m is not subject to any reset limitations.
   5) If month m is not a payment reset month, then $PMT_m = PMT_{m-1}$
   6) If, in any month,

$$UPB_{m-1} \times \left(1 + \frac{MIR_m}{12}\right) - PMT_m > UPB_{ORIG} \times NAC,$$

   then recalculate PMT_m without applying any Payment Reset Limit.
   c. For Balloon Loans, or for loans that have RIOP = RM, if m = RM then:

$$PMT_m = UPB_{m-1} \times \left(1 + \frac{MIR_m}{12}\right)$$

   d. In all cases, PMT_m should amortize the loan within the Remaining Maturity:

$$PMT_m = 0 \text{ for } m > RM \text{ or after } UPB_m = 0$$

3. Determine Net Yield Rate (NYR_m) and, for sold loans, Pass-Through Rate (PTR_m) applicable to the m[th] payment:

$$NYR_m = MIR_m - SFR$$
$$PTR_m = NYR_m - GFR$$

4. Calculate Scheduled Interest Accrued (during month m − 1) on account of the m[th] payment (SIA_m)

$$SIA_m = UPB_{m-1} \times \frac{MIR_m}{12}$$

5. Calculate the Scheduled Interest component of the m[th] payment (SI_m)

$$SI_m = \min\left(SIA_m,\ PMT_m\right)$$

6. Calculate Scheduled Principal for the m[th] payment (SP_m):

$$SP_m = \min\left(PMT_m - SIA_m,\ UPB_{m-1}\right)$$

Note: Scheduled Principal should not be greater than the remaining UPB. SPM can be negative if the Scheduled Payment is less than Scheduled Interest Accrued.

7. Calculate Loan Unpaid Principal Balance after taking into account the m^{th} monthly payment (UPB_m):

$$UPB_m = max\left(UPB_{m-1} - SP_m,\ 0\right)$$

8. In the month when UPB_m is reduced to zero, reset

$$PMT_m = UPB_{m-1} \times \left(1 + \frac{MIR_m}{12}\right)$$

9. Repeat all steps for m = 1...RM or until $UPB_m = 0$.

Note: If UPB_{RM} is greater than zero, the performing portion is included in Credit Losses (section 3.6.3.7.3, Stress Test Whole Loan Cash Flow Procedures, of this Appendix).

10. Determine Net Yield Rate (NYR_o) and, for sold loans, Pass-Through Rate (PTR_o) for month 0:

$$NYR_0 = MIR_0 - SFR$$

$$PTR_0 = NYR_0 - GFR$$

3.6.3.3.4 Mortgage Amortization Schedule Outputs

The Mortgage Amortization Schedule Outputs set forth in Table 3–33 are used in section 3.6.3.4, Single Family Default and Prepayment Rates, section 3.6.3.5, Multifamily Default and Prepayment Rates, section 3.6.3.6, Calculation of Single Family and Multifamily Mortgage Losses, section 3.6.3.7, Stress Test Whole Loan Cash Flows, and section 3.6.3.8, Whole Loan Accounting Flows, of this Appendix.

TABLE 3–33—MORTGAGE AMORTIZATION SCHEDULE OUTPUTS

Variable	Description
UPB_m	Unpaid Principal Balance for months m=1...RM
MIR_m	Mortgage Interest Rate for months m=1...RM
NYR_m	Net Yield Rate for months m=1...RM
PTR_m	Passthrough Rate for months m=1...RM
SP_m	Scheduled Principal (Amortization) for months m=1...RM
SI_m	Scheduled Interest for months m=1...RM
PMT_m	Scheduled Mortgage Payment for months m=1...RM

3.6.3.4 Single Family Default and Prepayment Rates

3.6.3.4.1 Single Family Default and Prepayment Overview

[a] The Stress Test projects conditional Default and Prepayment rates for each single family Loan Group for each month of the Stress Period. The conditional rate is the percentage (by principal balance) of the remaining loans in a Loan Group that defaults or prepays during a given period of time. Computing Default and Prepayment rates for a Loan Group requires information on the Loan Group characteristics at the beginning of the Stress Test, historical and projected interest rates from section 3.3, Interest Rates, and house price growth rates and volatility measures from section 3.4, Property Valuation, of this Appendix.

[b] *Explanatory Variables.* Several explanatory variables are used in the equations to determine Default and Prepayment rates for single family loans: Mortgage Age, Original Loan-to-Value (LTV) ratio, Probability of Negative Equity, Burnout, the percentage of Investor-owned Loans, Relative Interest Rate Spread, Payment Shock (for ARMs only), Initial Rate Effect (for ARMs only), Yield Curve Slope, Relative Loan Size, and Mortgage Product Type. Regression coefficients (weights) are associated with each variable. All of this information is used to compute conditional quarterly Default and Prepayment rates throughout the Stress Test. The quarterly rates are then converted to monthly conditional Default and Prepayment rates, which are used to calculate Stress Test Whole Loan cash flows and Default losses. *See* section 3.6.3.7, Stress Test Whole Loan Cash Flows, of this Appendix.

[c] The regression coefficients for each Loan Group will come from one of three models. The choice of model will be determined by the values of the single family product code and Government Flag in the RBC Report. *See* section 3.6.3.4.3.2, Prepayment and Default Rates and Performance Fractions, of this Appendix.

[d] *Special Provision for Accounting Calculations.* For accounting calculations that require cash flows over the entire remaining life of the instrument, Default and Prepayment rates for months beyond the end of the Stress Test are held constant at their values for month 120.

3.6.3.4.2 Single Family Default and Prepayment Inputs

The information in Table 3–34 is required for each single family Loan Group:

TABLE 3–34—SINGLE FAMILY DEFAULT AND PREPAYMENT INPUTS

Variable	Description	Source
PROD	Mortgage Product Type	RBC Report
A_0	Age *immediately prior to* start of Stress Test, in months (weighted average for Loan Group)	RBC Report
LTV_{ORIG}	Loan-to-Value ratio at Origination (weighted average for Loan Group)	RBC Report
UPB_{ORIG}	UPB at Origination (aggregate for Loan Group)	RBC Report
MIR_{ORIG}	Mortgage Interest Rate at Origination (“Initial Rate” for ARMs), decimal per annum (weighted average for loan group)	RBC Report
UPB_0	Unpaid Principal Balance immediately prior to start of Stress Test (aggregate for Loan Group)	RBC Report
UPB_m	Unpaid Principal Balance in months m = 1...RM	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs

TABLE 3–34—SINGLE FAMILY DEFAULT AND PREPAYMENT INPUTS—Continued

Variable	Description	Source
MIR_m	Mortgage Interest Rate in months m = 1...RM (weighted average for Loan Group)	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
$MCON_m$	Conventional (30 Year Fixed-Rate) Mortgage Rate series projected for months 1...RM and for the 24 months prior to the start of the Stress Test	section 3.3.2, Interest Rates Inputs, and section 3.3.4, Interest Rates Outputs
$T12Y_m$	1-year CMT series projected for months 1...120 of the Benchmark region and time period	section 3.3.4, Interest Rates Outputs
$T120Y_m$	10-year CMT series projected for months 1...120 of the Benchmark region and time period	section 3.3.4, Interest Rates Outputs
$HPGR_q$	Vector of House Price Growth Rates for quarters q = 1...40 of the Stress Period	section 3.4.4, Property Valuation Outputs
$CHPGF_0^{LG}$	Cumulative House Price Growth Factor since Loan Origination (weighted average for Loan Group)	RBC Report
α, β	HPI Dispersion Parameters for the Stress Period (Benchmark Census Division, currently West South Central Census Division, as published in the OFHEO House Price Report for 1996:3)	α = 0.002977 β = −0.000024322
IF	Fraction (by UPB, in decimal form) of Loan Group backed by Investor-owned properties	RBC Report
RLS_{ORIG}	Weighted average Relative Loan Size at Origination (Original UPB as a fraction of average UPB for the state and Origination Year of loan origination)	RBC Report

3.6.3.4.3 Single Family Default and Prepayment Procedures

3.6.3.4.3.1 Single Family Default and Prepayment Explanatory Variables

[a] Compute the explanatory variables for single family Default and Prepayment in the seven steps as follows:

1. Calculate A_q, the loan Age in quarters, for quarter q:

$$A_q = int\left(\frac{A_0}{3}\right) + q,$$

Where:

int means to round to the lower integer if the argument is not an integer.

2. Calculate $PNEQ_q$, the Probability of Negative Equity in quarter q:

$$PNEQ_q = N\left(\frac{ln LTV_q}{s_q}\right),$$

Where:

N designates the cumulative normal distribution function.

a. LTV_q is evaluated for a quarter q as:

$$LTV_{ORIG} \times \frac{\left(\begin{array}{l}\text{Ratio of current}\\ \text{Loan Group UPB}\\ \text{to Original UPB}\end{array}\right)}{\left(\begin{array}{l}\text{Ratio of current property}\\ \text{value (based on HPI in}\\ \text{quarter q) to original}\\ \text{property value (based on}\\ \text{HPI at Origination)}\end{array}\right)}$$

The HPI at Origination is updated to the beginning of the Stress Test using actual historical experience as measured by the OFHEO HPI; and then updated within the Stress Test using House Price Growth Factors from the Benchmark region and time period:

$$LTV_q = LTV_{ORIG} \times \frac{\left(\frac{UPB_{m=3q-3}}{UPB_{ORIG}}\right)}{\left[CHPGF_0^{LG} \times exp\left(\sum_{k=1}^{q} HPGR_k\right)\right]}$$

Where:

$UPB_{m=3q-3}$ = UPB for the month at the end of the quarter prior to quarter q

b. Calculate the Dispersion of House Prices for loans in quarter q of the Stress Test (σ_q) as follows:

$$\sigma_q = \sqrt{\alpha A'_q + \beta A'^2_q}$$

Where:

α and β are obtained from Table 3–34 and

$$A'_q = min\left(A_q, -\frac{\alpha}{2\beta}\right)$$

3. Calculate B_q, the Burnout factor in quarter q. A loan's Prepayment incentive is ''burned out'' (i.e., reduced) if, during at least two of the previous eight full quarters, the borrower had, but did not take advantage of, an opportunity to reduce his or her mortgage interest rate by at least two percentage points. For this purpose, the mortgage interest rate is compared with values of the Conventional Mortgage Rate (MCON) Index.

a. Compare mortgage rates for each quarter of the Stress Test and for the eight quarters prior to the start of the stress test (q = −7, −6, ...0, 1, ...30):

$$\begin{array}{l} b_q = 1 \text{ if } MCON_m + 0.02 \le MIR_m \\ \qquad \text{for all three months in quarter q} \\ \qquad \text{(i.e., } m = 3q-2,\ 3q-1,\ 3q), \\ b_q = 0 \text{ otherwise} \end{array}$$

Note: For this purpose, $MCON_m$ is required for the 24 months (eight quarters) prior to the start of the Stress Test. Also, $MIR_m = MIR_o$ for m <0.

b. Determine whether the loan is ''burned out'' in quarter q (Burnout Flag, B_q^f):

$$\begin{array}{l} B_q^f = 1 \text{ if } b_{q'} = 1 \text{ for two or more} \\ \qquad \text{quarters } q' \text{ between q-8 and q-1} \\ \qquad \text{inclusive, or since Origination if} \\ \qquad 2 < A_q < 8 \text{ (Note: by definition,} \\ \qquad B_q = 0 \text{ if } A_q < 3); \\ B_q^f = 0 \text{ otherwise} \end{array}$$

Where:

q′ = index variable for prior 8 quarters

c. Adjust for recently originated loans as follows:

$$\begin{aligned} B_q &= 0.25 \times B_q^f \text{ if } A_q = 3 \text{ or } 4 \\ &= 0.50 \times B_q^f \text{ if } A_q = 5 \text{ or } 6 \\ &= 0.75 \times B_q^f \text{ if } A_q = 7 \text{ or } 8 \\ &= B_q^f \text{ otherwise} \end{aligned}$$

4. Calculate RS_q, the Relative Spread in quarter q, as the average value of the monthly Relative Spread of the Original mortgage interest rate to the Conventional (30-Year Fixed Rate) Mortgage Rate series for the three months in the quarter.

Note: Use the Current MIR for Fixed Rate Loans and the Original MIR for Adjustable Rate Loans.

$$RS_q = avg\left(\frac{MIR - MCON_m}{MIR}\right)$$

over all three months m in quarter q

If MIR = 0, then $RS_q = -0.20$ for all q.

5. Calculate YCS_q, the Yield Curve Slope in quarter q, as the average of the monthly ratio of the 10-Year CMT to the One-Year CMT for the three months in the quarter:

$$YCS_q = avg\left(\frac{T120Y_m}{T12Y_m}\right)$$

for all three months in quarter q

6. Evaluate the Payment Shock Indicator (PS_q) for ARMs only:

$$PS_q = RS_q \text{ if } PROD = ARM$$

7. Evaluate the Initial Rate Effect Flag ($IREF_q$) for ARMS only:

$$IREF_q = 1 \text{ if } A_q \leq 12 \text{ and } PROD = ARM$$
$$= 0 \text{ otherwise}$$

3.6.3.4.3.2 Prepayment and Default Rates and Performance Fractions

[a] Calculate Prepayment and Default Rates and Performance Fractions using the following five steps:

1. Compute the logits for Default and Prepayment using the formulas for simultaneous processes using inputs from Table 3–34 and explanatory variable coefficients in Table 3–35.

Note: $\beta_{BCal_{LTV}}$ is the LTV-specific constant used to calibrate the Default rates to the BLE.

$$X\beta_q = \beta_{A_q} + \beta_{LTV_{ORIG}} + \beta_{PNEQ_q} + \beta_{B_q}B_q + \beta_{IF}IF + \beta_{PS_q} + \beta_{IREF} \times IREF_q + \beta_{Prod} + \beta_{BCal_{LTV}} + \beta_0$$

$$X\gamma_q = \gamma_{A_q} + \gamma_{LTV_{ORIG}} + \gamma_{PNEQ_q} + \gamma_{B_q}B_q + \gamma_{IF}IF + \gamma_{RS_q} + \gamma_{PS_q} + \gamma_{YCS_q} + \gamma_{IREF} \times IREF_q + \gamma_{RLS_{ORIG}} + \gamma_{Prod} + \gamma_0$$

TABLE 3–35—COEFFICIENTS FOR SINGLE FAMILY DEFAULT AND PREPAYMENT EXPLANATORY VARIABLE

Explanatory Variable (V)	30-Year Fixed-Rate Loans		Adjustable-Rate Loans (ARMs)		Other Fixed-Rate Loans	
	Default Weight (β_v)	Pre-payment Weight (γ_v)	Default Weight (β_v)	Pre-payment Weight (γ_v)	Default Weight (β_v)	Pre-payment Weight (γ_v)
A_q						
$0 \leq A_q \leq 4$	−0.6276	−0.6122	−0.7046	−0.5033	−0.7721	−0.6400
$5 \leq A_q \leq 8$	−0.1676	0.1972	−0.2259	0.1798	−0.2738	0.1721
$9 \leq A_q \leq 12$	−0.05872	0.2668	0.01504	0.2744	−0.09809	0.2317
$13 \leq A_q \leq 16$	0.07447	0.2151	0.2253	0.2473	0.1311	0.1884
$17 \leq A_q \leq 20$	0.2395	0.1723	0.3522	0.1421	0.3229	0.1900
$21 \leq A_q \leq 24$	0.2773	0.2340	0.4369	0.1276	0.3203	0.2356
$25 \leq A_q \leq 36$	0.2740	0.1646	0.2954	0.1098	0.3005	0.1493
$37 \leq A_q \leq 48$	0.1908	−0.2318	0.06902	−0.1462	0.2306	−0.2357
$49 \leq A_q$	−0.2022	−0.4059	−0.4634	−0.4314	−0.1614	−0.2914
LTV_{ORIG}						
$LTV_{ORIG} \leq 60$	−1.150	0.04787	−1.303	0.08871	−1.280	0.02309
$60 < LTV_{ORIG} \leq 70$	−0.1035	−0.03131	−0.1275	−0.005619	−0.06929	−0.02668
$70 < LTV_{ORIG} \leq 75$	0.5969	−0.09885	0.4853	−0.09852	0.6013	−0.05446
$75 < LTV_{ORIG} \leq 80$	0.2237	−0.04071	0.1343	−0.03099	0.2375	−0.03835
$80 < LTV_{ORIG} \leq 90$	0.2000	−0.004698	0.2576	0.004226	0.2421	−0.01433
$90 < LTV_{ORIG}$	0.2329	0.1277	0.5528	0.04220	0.2680	0.1107
$PNEQ_Q$						
$0 < PNEQ_q \leq 0.05$	−1.603	0.5910	−1.1961	0.4607	−1.620	0.5483
$0.05 < PNEQ_q \leq 0.1$	−0.5241	0.3696	−0.3816	0.2325	−0.5055	0.3515
$0.1 < PNEQ_q \leq 0.15$	−0.1805	0.2286	−0.1431	0.1276	−0.1249	0.2178
$0.15 < PNEQ_q \leq 0.2$	0.07961	−0.02000	−0.04819	0.03003	0.07964	−0.02137
$0.2 < PNEQ_q \leq 0.25$	0.2553	−0.1658	0.2320	−0.1037	0.2851	−0.1540
$0.25 < PNEQ_q \leq 0.3$	0.5154	−0.2459	0.2630	−0.1829	0.4953	−0.2723

TABLE 3–35—COEFFICIENTS FOR SINGLE FAMILY DEFAULT AND PREPAYMENT EXPLANATORY VARIABLE—Continued

Explanatory Variable (V)	30-Year Fixed-Rate Loans		Adjustable-Rate Loans (ARMs)		Other Fixed-Rate Loans	
	Default Weight (β_v)	Pre-payment Weight (γ_v)	Default Weight (β_v)	Pre-payment Weight (γ_v)	Default Weight (β_v)	Pre-payment Weight (γ_v)
$0.3 < PNEQ_q \leq 0.35$	0.6518	−0.2938	0.5372	−0.2075	0.5979	−0.2714
$0.35 < PNEQ_q$	0.8058	−0.4636	0.7368	−0.3567	0.7923	−0.3986
B_q	1.303	−0.3331	0.8835	−0.2083	1.253	−0.3244
RLS						
$0 < RLS_{ORIG} \leq 0.4$	....	−0.5130	....	−0.4765	....	−0.4344
$0.4 < RLS_{ORIG} \leq 0.6$	....	−0.3264	....	−0.2970	....	−0.2852
$0.6 < RLS_{ORIG} \leq 0.75$	....	−0.1378	....	−0.1216	....	−0.1348
$0.75 < RLS_{ORIG} \leq 1.0$	....	0.03495	....	0.04045	....	0.01686
$1.0 < RLS_{ORIG} \leq 1.25$	....	0.1888	....	0.1742	....	0.1597
$1.25 < RLS_{ORIG} \leq 1.5$	....	0.3136	....	0.2755	....	0.2733
$1.5 < RLS_{ORIG}$	....	0.4399	....	0.4049	....	0.4045
IF	0.4133	−0.3084	0.6419	−0.3261	0.4259	−0.3035
RS_q						
$RS_q \leq -0.20$	....	−1.368	....	−0.5463	....	−1.195
$-0.20 < RS_q \leq -0.10$	....	−1.023	....	−0.4560	....	−0.9741
$-0.10 < RS_q \leq 0$	....	−0.8078	....	−0.4566	....	−0.7679
$0.10 < RS_q \leq 0.10$	....	−0.3296	....	−0.3024	....	−0.2783
$0 < RS_q \leq 0.20$	....	0.8045	....	0.3631	....	0.7270
$0.20 < RS_q \leq 0.30$	....	1.346	....	0.7158	....	1.229
$0.30 < RS_q$	....	1.377	....	0.6824	....	1.259
PS_q						
$PS_q \leq -0.20$	....	....	0.08490	0.6613	....	....
$-0.20 < PS_q \leq -0.10$	....	....	0.3736	0.4370	....	....
$-0.10 < PS_q \leq 0$	....	....	0.2816	0.2476	....	....
$0 < PS_q \leq 0.10$	....	....	0.1381	0.1073	....	....
$0.10 < PS_q \leq 0.20$	....	....	−0.1433	−0.3516	....	....
$0.20 < PS_q \leq 0.30$	....	....	−0.2869	−0.5649	....	....
$0.30 < PS_q$	....	....	−0.4481	−0.5366	....	....
YCS_q						
$YCS_q < 1.0$	....	−0.2582	....	−0.2947	....	−0.2917
$1.0 \leq YCS_q < 1.2$	....	−0.02735	....	−0.1996	....	−0.01395
$1.2 \leq YCS_q < 1.5$	....	−0.04099	....	0.03356	....	−0.03796
$1.5 \leq YCS_q$	....	0.3265	....	0.4608	....	0.3436
$IREF_q$	....	....	0.1084	−0.01382	....	....
PROD						
ARMS	....	....	0.8151	0.2453	....	....
Balloons Loans	....	....	....	....	1.253	0.9483
15-Year FRMs	....	....	....	....	−1.104	0.07990
20-Year FRMs	....	....	....	....	−0.5834	0.06780
Government Loans	....	....	....	....	0.9125	−0.5660

TABLE 3–35—COEFFICIENTS FOR SINGLE FAMILY DEFAULT AND PREPAYMENT EXPLANATORY VARIABLE—Continued

Explanatory Variable (V)	30-Year Fixed-Rate Loans		Adjustable-Rate Loans (ARMs)		Other Fixed-Rate Loans	
	Default Weight (β_v)	Prepayment Weight (γ_v)	Default Weight (β_v)	Prepayment Weight (γ_v)	Default Weight (β_v)	Prepayment Weight (γ_v)
$BCal_{LTV}$						
$LTV_{ORIG} \leq 60$	2.045	....	2.045	....	2.045	....
$60 < LTV_{ORIG} \leq 70$	0.3051	....	0.3051	....	0.3051	....
$70 < LTV_{ORIG} \leq 75$	−0.07900	....	−0.07900	....	−0.07900	....
$75 < LTV_{ORIG} \leq 80$	−0.05519	....	−0.05519	....	−0.05519	....
$80 < LTV_{ORIG} \leq 90$	−0.1838	....	−0.1838	....	−0.1838	....
$90 < LTV_{ORIG}$	0.2913	....	0.2913	....	0.2913	....
Intercept (β_0, γ_0)	−6.516	−4.033	−6.602	−3.965	−6.513	−3.949

2. The choice of coefficients from Table 3–35 will be governed by the single family product code and Government Flag, according to Table 3–36.

TABLE 3–36—SINGLE FAMILY PRODUCT CODE COEFFICIENT MAPPING

Single Family Product Code	Model Coefficient Applied
Non-Government Loans	
Fixed Rate 30YR	30-Year FRMs
Fixed Rate 20YR	20-Year FRMs
Fixed Rate 15YR	15-Year FRMs
5-Year Fixed Rate Balloon	Balloon Loans
7-Year Fixed Rate Balloon	Balloon Loans
10-Year Fixed Rate Balloon	Balloon Loans
15-Year Fixed Rate Balloon	Balloon Loans
Adjustable Rate	ARMs
Second Lien	Balloon Loans
Other	Balloon Loans
Government Loans	
Government Flag	Model Coefficient Applied
All government loans except for ARMs	Government Loans
Government ARMs	ARMs

3. Compute Quarterly Prepayment and Default Rates (QPR, QDR) from the logistic expressions as follows:

$$QDR_q = \frac{exp\left\{X\beta_q\right\}}{1 + exp\left\{X\beta_q\right\} + exp\left\{X\gamma_q\right\}}$$

$$QPR_q = \frac{exp\left\{X\gamma_q\right\}}{1 + exp\left\{X\beta_q\right\} + exp\left\{X\gamma_q\right\}}$$

4. Convert quarterly rates to monthly rates using the following formulas for simultaneous processes. The quarterly rate for q = 1 gives the monthly rate for months m = 1,2,3, and so on through q = 40:

$$MDR_m = \frac{QDR_q}{QDR_q + QPR_q} \times \left[1 - \left(1 - QDR_q - QPR_q\right)^{\frac{1}{3}}\right]$$

$$MPR_m = \frac{QPR_q}{QDR_q + QPR_q} \times \left[1 - \left(1 - QDR_q - QPR_q\right)^{\frac{1}{3}}\right]$$

5. Calculate Defaulting Fraction (DEF), Prepaying Fraction (PRE), and Performing Fraction (PERF) of the Initial Loan Group. Initially (at the beginning of the Stress Test), all loans are assumed to be performing, i.e. $PERF_0 = 1.0$. For each month m = 1...RM, calculate the following quantities. *Note:* For m > 120, use and MPR_{120} and MDR_{120}:

$$PRE_m = PERF_{m-1} \times MPR_m$$
$$DEF_m = PERF_{m-1} \times MDR_m$$
$$PERF_m = PERF_{m-1} - PRE_m - DEF_m$$

3.6.3.4.4 Single Family Default and Prepayment Outputs

Single family Default and Prepayment outputs are set forth in Table 3–37.

Prepayment, Default and Performing Fractions for single family loans for months m = 1...RM are used in section 3.6.3.6, Calculation of Single Family and Multifamily Mortgage Losses; and section 3.6.3.7, Stress Test Whole Loan Cash Flows, of this Appendix. Quarterly LTV ratios are used in section 3.6.3.6.2.3, Single Family Gross Loss Severity Procedures, of this Appendix.

TABLE 3–37—SINGLE FAMILY DEFAULT AND PREPAYMENT OUTPUTS

Variable	Description
LTV_q	Current Loan-to-Value ratio in quarter q = 1...40
PRE_m^{SF}	Prepaying Fraction of Initial Loan Group in month m = 1...RM (single family Loans)
DEF_m^{SF}	Defaulting Fraction of Initial Loan Group in month m = 1...RM (single family Loans)
$PERF_m^{SF}$	Performing Fraction of Initial original Loan Group in month m = 1...RM (single family loans)

3.6.3.5 Multifamily Default and Prepayment Rates

3.6.3.5.1 Multifamily Default and Prepayment Rates Overview

[a] The Stress Test projects conditional Default and Prepayment rates for each multifamily Loan Group for each month of the Stress Period. Computing Default rates for a Loan Group requires information on the Loan Group characteristics at the beginning of the Stress Test and the economic conditions of the Stress Period—interest rates (section 3.3 of this Appendix), vacancy rates and rent growth rates (section 3.4 of this Appendix). These input data are used to create values for the explanatory variables in the Multifamily Default component.

[b] *Explanatory Variables for Default Rates.* Ten explanatory variables are used as specified in the equations section 3.6.3.5.3.1, of this Appendix, to determine Default rates for multifamily loans: Mortgage Age, Mortgage Age Squared, New Book indicator, New Book—ARM interaction, New Book—Balloon Loan interaction, Ratio Update Flag, current Debt-Service Coverage Ratio, Underwater Current Debt-Service Coverage indicator, Loan-To-Value Ratio at origination/acquisition, and a Balloon Maturity indicator. Regression coefficients (weights) are associated with each variable. All of this information is used to compute conditional annual Default rates throughout the Stress Test. The annualized Default rates are converted to monthly conditional Default rates and are used together with monthly conditional Prepayment rates to calculate Stress Test Whole Loan Cash Flows. (*See* section 3.6.3.7, Stress Test Whole Loan Cash Flows, of this appendix).

[c] *Specification of Multifamily Prepayment Rates.* Multifamily Prepayment rates are not generated by a statistical model but follow a set of Prepayment rules that capture the effect of yield maintenance, Prepayment penalties and other mechanisms that effectively curtail or eliminate multifamily Prepayments for a specified period of time.

[d] *Special Provision for Accounting Calculations.* For accounting calculations, which require cash flows over the entire remaining life of the instrument, Default and Prepayment rates for months beyond the end of the Stress Test are held constant at their values for month 120.

3.6.3.5.2 Multifamily Default and Prepayment Inputs

The information in Table 3–38 is required for each multifamily Loan Group:

TABLE 3–38—LOAN GROUP INPUTS FOR MULTIFAMILY DEFAULT AND PREPAYMENT CALCULATIONS

Variable	Description	Source
	Mortgage Product Type	RBC Report
A_0	Age immediately prior to start of Stress Test, in months (weighted average for Loan Group)	RBC Report
NBF	New Book Flag	RBC Report
RUF	Ratio Update Flag	RBC Report
LTV_{ORIG}	Loan-to-Value ratio at loan Origination	RBC Report
DCR_0	Debt Service Coverage Ratio at the start of the Stress Test	RBC Report
PMT_0	Amount of the mortgage Payment (principal and interest) prior to the start of the Stress Test, or first Payment for new loans (aggregate for Loan Group)	RBC Report
PPEM	Prepayment Penalty End Month number in the Stress Test (weighted average for Loan Group)	RBC Report
RM	Remaining term to Maturity in months (i.e., number of contractual payments due between the start of the Stress Test and the contractual maturity date of the loan) (weighted average for Loan Group)	RBC Report
RGR_m	Benchmark Rent Growth for months m = 1...120 of the Stress Test	section 3.4.4, Property Valuation Outputs
RVR_m	Benchmark Vacancy Rates for months m = 1...120 of the Stress Test	section 3.4.4, Property Valuation Outputs
PMT_m	Scheduled Payment for months m = 1...RM	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
OE	Operating expenses as a share of gross potential rents (0.472)	fixed decimal from Benchmark region and time period

TABLE 3–38—LOAN GROUP INPUTS FOR MULTIFAMILY DEFAULT AND PREPAYMENT CALCULATIONS—Continued

Variable	Description	Source
RVR_o	Initial rental vacancy rate	0.0623

3.6.3.5.3 Multifamily Default and Prepayment Procedures

3.6.3.5.3.1 Explanatory Variables

[a] Compute the explanatory variables for multifamily Default and Prepayment in five steps as follows:

1. Calculate Loan Age in Years for months m = 0...120 of the Stress Test (AY_m):

$$AY_m = \frac{A_0 + m}{12}$$

Where:

A_0 + m is Loan Age in months at the beginning of month m of the Stress Test.

Note: AY_m is calculated for each month m, whereas the corresponding Age variable for single family Loans A_q is calculated only quarterly.

2. Assign Product and Ratio Update Flags (NBF, NAF, NBLF, RUF). *Note:* these values do not change over time for a given Loan Group.

a. New Book Flag (NBF):

NBF = 1 for Fannie Mae loans acquired after 1987 and Freddie Mac loans acquired after 1992, *except* for loans that were refinanced to avoid a Default on a loan originated or acquired earlier.

NBF = 0 otherwise.

b. New ARM Flag (NAF):

$$NAF = ARMF \times NBF$$

Where:

ARMF = 1 for ARMs (including Balloon ARMs)

ARMF = 0 otherwise

c. New Balloon Flag (NBLF):

$$NBLF = BALF \times NBF$$

Where:

BALF = 1 for Fixed Rate Balloon Loans

BALF = 0 otherwise

d. Ratio Update Flag (RUF):

RUF = 1 for loans whose LTV and DCR were updated at origination or Enterprise acquisition

RUF = 0 otherwise.

3. Calculate Debt Service Coverage Ratio in month m (DCR_m):

The standard definition of Debt Service Coverage Ratio is current net operating income divided by current mortgage payment. However, for the Stress Test, update DCR_m each month from the prior month's value using Rent Growth Rates (RGR_m) and Rental Vacancy Rates (RVR_m) starting with DCR_m from Table 3–38, as follows:

$$DCR_m = DCR_{m-1} \times \left[\frac{(1 + RGR_m)\left(\frac{1 - OE - RVR_m}{1 - OE - RVR_{m-1}}\right)}{\frac{PMT_m}{PMT_{m-1}}} \right]$$

4. Assign Underwater Debt-Service Coverage Flag ($UWDCRF_m$):

$UWDCRF_m$ = 1 if DCR_m <1 in month m

$UWDCRF_m$ = 0 otherwise.

5. Assign Balloon Maturity Flag (BMF_m) for any Balloon Loan that is within twelve months of its maturity date:

$$BMF_m = 1 \text{ if } RM - m < 12$$

$$BMF_m = 0 \text{ otherwise.}$$

3.6.3.5.3.2 Default and Prepayment Rates and Performance Fractions

[a] Compute Default and Prepayment Rates and Performance Fractions for multifamily loans in the following four steps:

1. Compute the logits for multifamily Default using inputs from Table 3–38 and coefficients from Table 3–39. For indexing purposes, the Default rate for a period m is the likelihood of missing the m^{th} payment; calculate its corresponding logit ($X\delta_m$) based on Loan Group characteristics as of the period *prior* to m, i.e. *prior* to making the m^{th} payment.

$$\begin{aligned} X\delta_m = {} & \delta_{AY}AY_{m-1} + \delta_{AY^2}AY_{m-1}^2 \\ & + \delta_{NBF}NBF + \delta_{NAF}NAF \\ & + \delta_{NBLF}NBLF + \delta_{RUF}RUF \\ & + \delta_{DCR}\,ln(DCR_{m-1}) \\ & + \delta_{UWDCRF}UWDCRF_{m-1} \\ & + \delta_{LTV}\,ln(LTV_{ORIG}) \\ & + \delta_{BMF}BMF_{m-1} + \delta_0 \end{aligned}$$

TABLE 3–39—EXPLANATORY VARIABLE COEFFICIENTS FOR MULTIFAMILY DEFAULT

Explanatory variable (V)	Default weight (δ_v)
AY	0.5171
AY^2	−0.02788
NBF	−2.041
NAF	1.694
NBLF	0.8191
RUF	−0.5929
DCR	−2.495
UWDCRF	1.488
LTV	0.8585
BMF	1.541
Intercept (δ_0)	−4.452

2. Compute Annual Prepayment Rate (APR) and Annual Default Rate (ADR) as follows:

$$ADR_m = \frac{exp\{X\delta_m\} \times (1 - APR_m)}{1 + exp\{X\delta_m\}}$$

APR_m is a constant, determined as follows:

a. For the up-rate scenario, APR_m = 0 for all months m

b. For the down-rate scenario,

APR_m = 2 percent during the Prepayment penalty period (i.e., when m ≤ PPEM)

APR_m = 25 percent after the Prepayment penalty period (i.e., when m > PPEM)

3. Convert annual Prepayment and Default rates to monthly rates (MPR and MDR) using the following formulas for simultaneous processes:

$$MPR_m = \frac{APR_m}{ADR_m + APR_m} \times \left[1 - (1 - ADR_m - APR_m)^{\frac{1}{12}}\right]$$

$$MDR_m = \frac{ADR_m}{ADR_m + APR_m} \times \left[1 - (1 - ADR_m - APR_m)^{\frac{1}{12}}\right]$$

4. Calculate Defaulting Fraction (DEF_m), Prepaying Fraction (PRE_m), and Performing Fraction ($PERF_m$) of the Initial Loan Group for each month m = 1...RM. Initially (immediately prior to the beginning of the Stress Test), all loans are assumed to be performing, i.e. $PERF_0$ = 1.0. *Note:* For m> 120, use MPR_{120} and MDR_{120}.

$$PRE_m = PERF_{m-1} \times MPR_m$$

$$DEF_m = PERF_{m-1} \times MDR_m$$

$$PERF_m = PERF_{m-1} - PRE_m - DEF_m$$

3.6.3.5.4 Multifamily Default and Prepayment Outputs

[a] Multifamily Default and Prepayment Outputs are set forth in Table 3–40.

TABLE 3–40—MULTIFAMILY DEFAULT AND PREPAYMENT OUTPUTS

Variable	Description
PRE_m^{MF}	Prepaying Fraction of initial Loan Group in month m=1...RM (multifamily Loans)
DEF_m^{MF}	Defaulting Fraction of initial Loan Group in month m=1...RM (multifamily Loans)
$PERF_m^{MF}$	Performing Fraction of initial Loan Group in month m=1...RM (multifamily Loans)

[b] Multifamily monthly Prepayment Fractions ($PERF_m^{MF}$) and monthly Default Fractions (DEF_m^{MF}) for months m=1...RM are used in section 3.6.3.6, Calculation of Single Family and Multifamily Mortgage Losses; section 3.6.3.7, Stress Test Whole Loan Cash Flows, and section 3.6.3.8, Whole Loan Accounting Flows, of this Appendix.

3.6.3.6 Calculation of Single Family and Multifamily Mortgage Losses

3.6.3.6.1 Calculation of Single Family and Multifamily Mortgage Losses Overview

[a] *Definition.* Loss Severity is the net cost to an Enterprise of a loan Default. Though losses may be associated with delinquency, loan restructuring and/or modification and other loss mitigation efforts, foreclosures are the only loss events modeled during the Stress Test.

[b] *Calculation.* The Loss Severity rate is expressed as a fraction of the Unpaid Principal Balance (UPB) at the time of Default. The Stress Test calculates Loss Severity rates for each Loan Group for each month of the Stress Period. Funding costs (and offsetting revenues) of defaulted loans are captured by discounting the Loss Severity elements using a cost-of-funds interest rate that varies during the Stress Period. Table 3–41 specifies the Stress Test Loss Severity timeline. Loss Severity rates also depend upon the application of Credit Enhancements and the credit ratings of enhancement providers.

TABLE 3–41—LOSS SEVERITY EVENT TIMING

Month	Event
1	First missed payment
4 (= MQ)	Loan is repurchased from securitized pool and UPB is passed through to MBS investors (Sold Loans only)
13 (= MF^{SF})	Single family foreclosure
18 (= MF^{MF})	Multifamily foreclosure
20 (= MF^{SF}+ MR^{SF})	Single family property disposition
31 (= MF^{MF}+MR^{MF})	Multifamily property disposition

[c] *Timing of the Default Process.* Mortgage Defaults are modeled as follows: defaulting loans enter foreclosure after a number of months (MQ, Months in Delinquency) and are foreclosed upon several months later. MF (Months in Foreclosure) is the total number of missed payments. Upon completion of foreclosure, the loan as such ceases to exist and the property becomes Real Estate Owned by the lender (REO). After several more months (MR, Months in REO), the property is sold. Foreclosure expenses are paid and MI proceeds (and, for multifamily loans, loss sharing proceeds) are received when foreclosure is completed. REO expenses are paid, and sales proceeds and other Credit Enhancements are received, when the property is sold. These timing differences are not modeled explicitly in the cash flows, but their economic effect is taken into account by present-valuing the default-related cash flows to the month of Default.

[d] *Gross Loss Severity, Credit Enhancement, and Net Loss Severity.* The calculation of mortgage losses is divided into three parts. First, Gross Loss Severity is determined by expressing the principal loss plus unpaid interest plus expenses as a percentage of the loan UPB at the time of Default (section 3.6.3.6.2, Single Family Gross Loss Severity, and section 3.6.3.6.3, Multifamily Gross Loss Severity, of this Appendix). Second, Credit Enhancements (CEs) are applied according to their terms to offset losses on loans that are covered by one or more CE arrangements (section 3.6.3.6.4, Mortgage Credit Enhancement, of this Appendix). Finally, to account for the timing of these different cash flows, net losses are discounted back to the month in which the Default initially occurred (section 3.6.3.6.5, Single Family and Multifamily Net Loss Severity, of this Appendix).

3.6.3.6.2 Single Family Gross Loss Severity

3.6.3.6.2.1 Single Family Gross Loss Severity Overview

The Loss Severity calculation adds the discounted present value of various costs and offsetting revenues associated with the foreclosure of single family properties, expressed as a fraction of UPB on the date of Default. The loss elements are:

[a] *Unpaid Principal Balance.* Because all Loss Severity elements are expressed as a fraction of Default date UPB, the outstanding loan balance is represented as 1.

[b] *Unpaid Interest.* Unpaid interest at the Mortgage Interest Rate is included in the MI claim amount. Unpaid interest at the Pass-Through Rate must be paid to MBS holders until the Defaulted loan is repurchased from the MBS pool.

[c] *Foreclosure Expenses and REO Expenses.* Foreclosure expenses are reimbursed by MI. REO expenses are incurred in connection with the maintenance and sale of a property after foreclosure is completed. Stress Test values for these quantities are derived from historical Enterprise REO experience.

[d] *Net Recovery Proceeds from REO sale (RP).* This amount is less than the sale price for ordinary properties as predicted by the HPI, because of the distressed nature of the sale.

3.6.3.6.2.2 Single Family Gross Loss Severity Inputs

The inputs in Table 3–42 are used to compute Gross Loss Severity for single family loans:

TABLE 3–42—LOAN GROUP INPUTS FOR GROSS LOSS SEVERITY

Variable	Description	Definition or Source
	Government Flag	RBC Report
MQ	Months Delinquent: time during which Enterprise pays delinquent loan interest to MBS holders	4 for sold loans 0 otherwise
MF	Months to Foreclosure: number of missed payments through completion of foreclosure	13 months
MR	Months from REO acquisition to REO disposition	7 months
F	Foreclosure Costs as a decimal fraction of Defaulted UPB	0.037
R	REO Expenses as a decimal fraction of Defaulted UPB	0.163

TABLE 3–42—LOAN GROUP INPUTS FOR GROSS LOSS SEVERITY—Continued

Variable	Description	Definition or Source
DR_m	Discount Rate in month m (decimal per annum)	6-month Enterprise Cost of Funds from section 3.3, Interest Rates
LTV_q	Current LTV in quarter q = 1...40	section 3.6.3.4.4, Single Family Default and Prepayment Outputs
MIR_m	Mortgage Interest Rate in month m (decimal per annum)	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
PTR_m	Pass-Through Rate applicable to payment due in month m (decimal per annum)	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
RR	Recovery Rate for Defaulted loans in the BLE, as a percent of predicted house price using HPI (decimal)	0.61

3.6.3.6.2.3 Single Family Gross Loss Severity Procedures

[a] Calculate single family gross Loss Severity using the following three steps:

1. Compute REO Proceeds in month m (RP_m) as a fraction of Defaulted UPB:

$$RP_m = \frac{RR}{LTV_q}$$

2. Compute MI Claim Amount on loans that Defaulted in month m (CLM_m^{MI}) as a fraction of Defaulted UPB:

$$CLM_m^{MI} = 1 + \left(\frac{MF}{12} \times MIR_m\right) + F \text{ for all loans other than Government Loans}$$

$$= 1 + \left(0.75 \times \frac{MF}{12} \times MIR_m\right) + (0.67 \times F) \text{ for Government Loans}$$

Where:

0.67 = FHA reimbursement rate on foreclosure-related expenses

0.75 = adjustment to reflect that FHA reimbursement on unpaid interest is at a government debenture rate, not MIR.

3. Compute Gross Loss Severity of loans that Defaulted in month m (GL_m) as a fraction of Defaulted UPB:

$$GLS_m = 1 + \left(\frac{MQ}{12} \times PTR_m\right) + F + R - RP_m \text{ but not} < 0$$

3.6.3.6.2.4 Single Family Gross Loss Severity Outputs

The single family Gross Loss Severity outputs in Table 3–43 are used in the Credit Enhancement calculations in section 3.6.3.6.4 of this Appendix.

TABLE 3–43—SINGLE FAMILY GROSS LOSS SEVERITY OUTPUTS

Variable	Description
GLS_m	Gross Loss Severity for loans that defaulted in month m = 1...120
CLM_m^{MI}	MI claim on account of loans that defaulted in month m = 1...120
RP_m	REO Proceeds on account of loans that defaulted in month m = 1...120

3.6.3.6.3 Multifamily Gross Loss Severity

3.6.3.6.3.1 Multifamily Gross Loss Severity Overview

The multifamily Loss Severity calculation adds the discounted present value of various costs and offsetting revenues associated with the foreclosure of multifamily properties, expressed as a fraction of Defaulted UPB. The loss elements are:

[a] *Unpaid Principal Balance (UPB).* Because all Loss Severity elements are expressed as a fraction of Default date UPB, the outstanding loan balance is represented as 1.

[b] *Unpaid Interest.* Unpaid interest at the Net Yield Rate is included in the Loss Sharing Claim amount. Unpaid interest at the Pass-Through Rate must be paid to MBS holders until the defaulted loan is repurchased from the MBS pool.

[c] *Net REO Holding Costs (RHC).* Foreclosure costs, including attorneys fees and other liquidation expenses are incurred between the date of Default and the date of foreclosure completion (REO acquisition). Operating and capitalized expenses are incurred and rental and other income are received between REO acquisition and REO disposition. As a result, half of the Net REO Holding Costs (RHC) are expensed at REO acquisition and the remainder are expensed at REO disposition.

[d] *Net Proceeds from REO sale (RP).* The gross sale price of the REO less all costs associated with the disposition of the REO asset are discounted from the date of REO sale.

3.6.3.6.3.2 Multifamily Gross Loss Severity Inputs

The inputs in Table 3–44 are used to compute Gross Loss Severity for multifamily Loans:

TABLE 3–44—LOAN GROUP INPUTS FOR MULTIFAMILY GROSS LOSS SEVERITY

Variable	Description	Value or Source
	Government Flag	RBC Report
DR_m	Discount Rate in month m (decimal per annum)	6-month Enterprise Cost of Funds from Section 3.3, Interest Rates
MQ	Time during which delinquent loan interest is passed-through to MBS holders	4 for sold loans 0 otherwise

TABLE 3–44—LOAN GROUP INPUTS FOR MULTIFAMILY GROSS LOSS SEVERITY—Continued

Variable	Description	Value or Source
PTR_m	Pass Through Rate applicable to payment due in month m (decimal per annum)	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
NYR_m	Net Yield Rate applicable to payment due in month m (decimal per annum)	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
RHC	Net REO holding costs as a decimal fraction of Defaulted UPB	0.1333
MF	Time from Default to completion of foreclosure (REO acquisition)	18 months
MR	Months from REO acquisition to REO disposition	13 months
RP	REO proceeds as a decimal fraction of Defaulted UPB	0.5888

3.6.3.6.3.3 Multifamily Gross Loss Severity Procedures

[a] Calculate multifamily gross loss severity in the following two steps:

1. For Conventional Loans, compute the Loss Sharing Claim Amount (CLM_m^{LSA}) and Gross Loss (GL_m) on loans that Defaulted in month m, as a fraction of Defaulted UPB:

$$CLM_m^{LSA} = 1.75 + \left(\frac{MF}{12} \times NYR_m\right) + RHC - RP$$

$$GL_m = 1 + \frac{MQ}{12} \times PTR_m + RHC - RP$$

2. For FHA-insured (i.e., government) multifamily Loans, separate Gross Loss Severity and Credit Enhancement calculations are not necessary. Net Loss Severity is determined explicitly in section 3.6.3.6.5, Single Family and Multifamily Net Loss Severity, of this Appendix).

3.6.3.6.3.4 Multifamily Gross Loss Severity Outputs

Multifamily Gross Loss Severity Outputs in Table 3–45 are used in the Credit Enhancements Calculations section 3.6.3.6.4, of this Appendix.

TABLE 3–45—MULTIFAMILY GROSS LOSS SEVERITY OUTPUTS FOR USE IN CREDIT ENHANCEMENT CALCULATIONS

Variable	Description
GLS_m	Gross Loss Severity for loans that Defaulted in month m = 1...120
CLM_m^{LSA}	Loss Sharing Claim on account of loans that Defaulted in month m = 1...120

3.6.3.6.4 Mortgage Credit Enhancement

3.6.3.6.4.1 Mortgage Credit Enhancement Overview

[a] *Types of Mortgage Credit Enhancements.* Credit Enhancements (CE) reimburse losses on individual loans. The CE most often utilized by the Enterprises at the present time is primary Mortgage Insurance (MI) including both private and government MI or loan guarantees (e.g. FHA, VA), which pays claims up to a given limit on each loan. Most other types of CE do not limit the amount payable on each loan individually, but do limit the aggregate amount available under a given CE arrangement or Contract. These two types of CE must be computed differently. To denote this distinction, this Appendix will refer to ''Loan Limit'' and ''Aggregate Limit'' CE types. Loan Limit CE includes Mortgage Insurance for single family loans and Loss-Sharing Arrangements (LSA) for multifamily loans. Aggregate Limit CE includes Pool Insurance, Spread Accounts, Letters of Credit, Cash or Collateral Accounts, and Subordination Agreements. For operational convenience in the Stress Test, the Aggregate Limit classification also includes Unlimited Recourse, which has neither loan-level nor aggregate-level coverage limits, and Modified Pool Insurance, Limited Recourse, Limited Indemnification and FHA risk-sharing, which may have both loan-level and aggregate-level coverage limits.

[b] *Loan Limit Credit Enhancements.* Loan Limit Credit Enhancements are applied to every covered loan individually, without regard to how much has been paid on any other covered loan. For example, an MI policy covers losses on an individual loan up to a specified limit. If every loan with MI were to Default, every claim would be payable regardless of the total outlay on the part of the MI provider. Loss Sharing Arrangements on multifamily loans operate the same way.

[c] *Aggregate Limit Credit Enhancements.* Aggregate Limit Credit Enhancements cover a group of loans on an aggregate basis. In most such arrangements, the coverage for any individual loan is unlimited, except that the total outlay by the provider cannot exceed a certain aggregate limit. Thus, the amount of Aggregate Limit coverage available to an individual loan depends, in practice, on how much has been paid on all previous claims under the specified Contract.

[d] *Credit Enhancement Counterparty Defaults.* CE payments from a rated counterparty are subject to Haircuts to simulate counterparty failures during the Stress Test. These Haircuts are based on the rating of the counterparty or guarantor immediately prior to the Stress Test, and are applied each month as described in section 3.5, Counterparty Defaults, of this Appendix.

[e] *Stress Test Application of Credit Enhancement.* The Stress Test calculates mortgage cash flows for aggregated Loan Groups, within which individual loans are assumed to have identical characteristics, and therefore are not differentiated in the computations. However, a single Loan Group may include loans with Loan Limit CE and/ or one or more types of Aggregate Limit CE. Additionally, this coverage may come from a rated provider or from cash or cash-equivalent collateral. Therefore, for computational purposes it is necessary to distinguish among the different possible CE combinations that each loan or subset of loans in a Loan Group may have. In the Stress Test, this is accomplished by creating Distinct Credit Enhancement Combinations (DCCs).

1. *Distinct Credit Enhancement Combinations.* When aggregating individual loans into Loan Groups for the RBC Report, the applicable CE arrangements will have been identified for each loan:
   a. Loan Group (LG) Number
   b. Initial UPB of individual loan
   c. Rating of MI or LSA Counterparty
   d. Loan-Limit Coverage Percentage for MI or LSA
   e. Contract Number for Aggregate Limit CE, First Priority
   f. Contract Number for Aggregate Limit CE, Second Priority
   g. Contract Number for Aggregate Limit CE, Third Priority
   h. Contract Number for Aggregate Limit CE, Fourth Priority
2. Individual loans for which all of the entries in step 1) of this section (except UPB and Loan-Limit Coverage Percent) are identical, are aggregated into a DCCs. For example, all loans in a given Loan Group with MI from a AAA-rated provider and no other CE would comprise one DCC whose balance is the aggregate of the included loans and whose MI Coverage Percent is the weighted average of that of the included loans. In each month, within each Loan Group, for each DCC, each applicable form of CE is applied in priority order to reduce Gross Loss Severity as much as possible to zero. The total CE payment for each DCC, as a percentage of Defaulted UPB is converted to a total CE

payment for each Loan Group and then factored into the calculation of Net Loss Severity in section 3.6.3.6.5, Single Family and Multifamily Net Loss Severity, of this Appendix.

3. *DCC First and Second Priority Available Aggregate CE Balance.* In the Stress Test, First and Second Priority Available Aggregate CE Balances are allocated to the DCCs that are parties to each Contract on a pro-rata basis. Third and Fourth Priority Aggregate Limit Contracts are not modeled because they are extremely rare. In each month of the Stress Test these CE Balances, adjusted by appropriate Haircuts, are reduced by the losses incurred by each DCC that is a party to each Contract. Spread Account deposits, if applicable, are included in the First and Second Priority DCC Available Aggregate CE Balances.

a. Spread Accounts may take one of two forms: Balance-Limited, or Deposit-Limited. A Balance-Limited Spread Account receives monthly spread payments based on the UPB of the covered loans until a required balance is achieved and maintained. Any amounts paid to cover losses must be replenished by future spread payments from the covered loans that are still performing. Thus, there is no known limit to the amount of spread deposits that may be made over the life of the covered loans. In contrast, for a Deposit-Limited Spread Account the limit is similar to a customary coverage limit. The total amount of spread deposits made into the account is limited to a maximum amount specified in the Contract.

b. In the Stress Test, the Available Contract Balance of a Spread Account is adjusted prior to the calculation of the DCC Available Balance as reported in the RBC Report. For each Spread Account contract, the Enterprises report the Remaining Limit Amount, which represents the maximum dollar amount of additional spread deposits that could be required under the Contract. For Deposit-Limited Spread Accounts, this amount is the maximum remaining dollar amount of spread deposits required under the Contract. For Balance-Limited Spread Accounts, this amount is defined as one-twelfth of the annualized spread rate times the UPB of the covered loans at the start of the Stress Test times the weighted average Remaining term to Maturity of those loans. However, the maximum amount of spread deposits that could be received will generally be higher than the amount reasonably expected to be received during the Stress Test, because the UPB of the covered loans, which is the basis for determining the amounts of future spread deposits, declines over the term of the Contract due to Amortization, Defaults, and Prepayments. Therefore, the Enterprises report an adjusted Available Contract Balance for both types of Spread Accounts before reporting the DCC Available Balance by adding the lesser of the Remaining Limit Amount or one-twelfth of the spread rate times the UPB of the covered loans at the start of the stress test times 60 months.

c. Modified Pool Insurance, Limited Recourse, Limited Indemnification and FHA risk-sharing contracts may have both loan-level and aggregate-level coverage limits. To account for this aspect of these types of Aggregate Limit CE, the Enterprises report a DCC Loan Level Coverage Limit Amount, which represents the share of each loss after deductibles (such as MI or First Priority Contract payments) covered by a given MPI Contract. (The Loan Level Coverage Limit Amount takes the value of one if the Contract is not of this type, representing that 100 percent of losses are covered by other types of Contracts).

d. In practice, Unlimited Recourse Contracts have neither loan-level nor aggregate-level coverage limits. However, the Enterprises report the Available Aggregate CE Balance of Unlimited Recourse Contracts as the summation of the Original UPB of all covered loans.

e. The Available Aggregate CE Balances of Collateral Account Contracts funded with anything other than Cash or Cash-equivalents are discounted by thirty percent to account for market risk in securities that are not cash equivalents.

f. Enterprise Loss Positions are treated as Aggregate Limit CE in terms of reducing remaining losses eligible to be covered by a next-priority Contract. However, since Enterprise Loss Positions are typically a deductible for other forms of supplementary coverage, payments from such accounts do not reduce loss severity.

[f] *Multiple Layers of Credit Enhancement.* For loans with more than one type of Credit Enhancement, MI or Loss Sharing is applied first, and then other types of CE (if available) are applied in priority order to the remaining losses. MI and Loss Sharing claims are payable regardless of whether (and to what extent) a loan is also covered by other forms of CE. MI is unique in that the MI payment is based on a percentage of a Claim Amount equal to the entire Defaulted UPB plus expenses, not the actual loss incurred upon liquidation. Therefore, an Enterprise can receive MI payments on a defaulted loan in excess of the actual realized loss on that loan. However, it is frequently the case that MI payments are insufficient to cover the entire loss amount. In such cases, one or more types of Aggregate Limit CE may be available to make up the deficiency. Unlike MI claims, however, the Claim Amounts for Loss Sharing and for all Aggregate Limit CE types do depend on the actual losses incurred; and unlike Loss Sharing and MI, Claim Amounts payable under other forms of CE are net of payments received on account of other forms of CE. When a single loan is covered by multiple forms of CE, the order in which they are to be applied (First Priority, Second Priority, etc.) must be specified. To avoid double-counting, a higher-numbered priority CE only covers losses that were not covered by a lower-numbered priority CE.

3.6.3.6.4.2 Mortgage Credit Enhancement Inputs

[a] For each Loan Group, the inputs in Table 3–46 are required:

TABLE 3–46—CE INPUTS FOR EACH LOAN GROUP

Variable	Description	Source
UPB_{ORIG}^{LG}	Origination UPB	RBC Report
UPB_0^{LG} and UPB_m^{LG}	Initial UPB and UPB in month m = 0,1...120	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
LTV_{ORIG}^{LG}	Original LTV	RBC Report
DEF_m^{LG} and $PERF_m^{LG}$	Defaulting and Performing Fractions of Initial Loan Group UPB in month m = 1...120	section 3.6.3.4.4, Single Family Default and Prepayment Outputs and section 3.6.3.5.4, Multifamily Default and Prepayment Outputs
$CLM_m^{MI,LG}$ $CLM_m^{LSA,LG}$	MI Claim Amount and LSA Claim Amount	section 3.6.3.6.2, Single Family Gross Loss Severity and section 3.6.3.6.3, Multifamily Gross Loss Severity
GLS_m^{LG}	Gross Loss Severity	section 3.6.3.6.2, Single Family Gross Loss Severity and section 3.6.3.6.3, Multifamily Gross Loss Severity

[b] For each DCC covering loans in the Loan Group, the inputs in Table 3–47 are required:

TABLE 3–47—INPUTS FOR EACH DISTINCT CE COMBINATION (DCC)

Variable	Description	Source
P^{DCC}	Percent of Initial Loan Group UPB represented by individual loan(s) in a DCC	RBC Report
$R^{MI,DCC}$ or $R^{LSA,DCC}$	Credit rating of Loan Limit CE (MI or LSA) Counterparty	RBC Report
$C^{MI,DCC}$ or $C^{LSA,DCC}$	Weighted Average Coverage Percentage for MI or LSA Coverage (weighted by Initial UPB)	RBC Report
$AB_0^{DCC,C1}$	DCC Available First Priority CE Balance immediately prior to start of the Stress Test	RBC Report
$AB_0^{DCC,C2}$	DCC Available Second Priority CE Balance immediately prior to start of the Stress Test	RBC Report
$R^{DCC,C1}$	DCC Credit Rating of First Priority CE Provider or Counterparty; or Cash/Cash Equivalent (which is not Haircutted)	RBC Report
$R^{DCC,C2}$	DCC Credit Rating of Second Priority CE Provider or Counterparty; or Cash/Cash Equivalent (which is not Haircutted)	RBC Report
$C^{DCC,C1}$	DCC Loan-Level Coverage Limit of First Priority Contract (If Subtype is MPI; otherwise = 1)	RBC Report
$C^{DCC,C2}$	DCC Loan-Limit Coverage Limit of Second Priority Contract (if Subtype is MPI; otherwise = 1)	RBC Report
$ExpMo^{DCC,C1}$	Month in the Stress Test (1...120 or after) in which the DCC First Priority Contract expires	RBC Report
$ExpMo^{DCC,C2}$	Month in the Stress Test (1...120 or after) in which the DCC Second Priority Contract expires	RBC Report
$ELPF^{DCC,C1}$	DCC Enterprise Loss Position Flag for First Priority Contract (Y or N)	RBC Report
$ELPF^{DCC,C2}$	DCC Enterprise Loss Position Flag for Second Priority Contract (Y or N)	RBC Report

[c] In the RBC Report, Aggregate Limit CE Subtypes are grouped as illustrated in Table 3–48.

TABLE 3–48—AGGREGATE LIMIT CE SUBTYPE GROUPING

Symbol	Subtype	Also Includes
REC	Unlimited Recourse	Unlimited Indemnification
PI	Pool Insurance	Pool Insurance
		Letter of Credit
		Subordination Arrangements
MPI	Modified Pool Insurance	Modified Pool Insurance
		Limited Recourse
		Limited Indemnification
		FHA Risk-sharing Agreements
CASH	Cash Account	Cash Account
COLL	Collateral Account	Collateral
ELP	Enterprise Loss Position	GSE Loss Position (ledger item)
SA	Spread Account	Spread Account

3.6.3.6.4.3 Mortgage Credit Enhancement Procedures

[a] For each month m of the Stress Test, for each Loan Group (LG), carry out the following six steps [a] 1–6 for each DCC. *Note:* Process the Loan Groups and DCCs using the numerical order assigned to them in the RBC Report.

1. Determine Mortgage Insurance Payment (MI_m) for single family loans in the DCC, or Loss Sharing Payment (LSA_m) for multifamily loans in the DCC, as a percentage of Defaulted UPB, applying appropriate counterparty Haircuts from section 3.5, of this Appendix:

$$MI_m^{DCC} = \left(1 - MIExp_m^{LG}\right) \times C^{MI,DCC} \times CLM_m^{MI,LG} \times \left[1 - \frac{m'}{60} \times MaxHct\left(R^{MI,DCC}\right)\right]$$

$$LSA_m^{DCC} = C^{LSA,DCC} \times CLM_m^{LSA,LG} \times \left[1 - \frac{m'}{60} \times MaxHct\left(R^{LSA,DCC}\right)\right]$$

Where:

m′ = *min* (m, 60). For counterparties rated below BBB, m′ = 60

$$\mathrm{MIExp}_m^{LG} = 1 \text{ if } \left(\mathrm{LTV}_{ORIG} \times \frac{\mathrm{UPB}_m^{LG}}{\mathrm{UPB}_{ORIG}^{LG}} \right) < 0.78$$

$$\mathrm{MIExp}_m^{LG} = 0 \text{ otherwise}$$

0.78 (78%) = the LTV at which MI is cancelled if payments are current

2. Determine Remaining Loss in Dollars (RLD) after application of MI or LSA and prior to application of other Aggregate Limit CE:

$$\mathrm{RLD}_m^{DCC,(MI-LSA)} = max\left[\left(\mathrm{GLS}_m^{LG} - \mathrm{MI}_m^{DCC}\right), 0\right] \times \mathrm{P}^{DCC} \times \mathrm{UPB}_{m-1}^{LG} \times \mathrm{DEF}_m^{LG}$$

3. Determine the contractual CE Payment in Dollars under the First Priority Contract C1. Determine Payment after Haircut. Update Remaining Loss Dollars and DCC Available Balance.

a. Determine CE Payment as the minimum of the Remaining Loss Dollars after MI or LSA (if applicable) times the DCC Loan-Level Coverage Limit (=1 if not MPI Contract) or the previous month's ending DCC Available Balance:

$$\mathrm{PD}_m^{DCC,C1} = min\left(\mathrm{RLD}_m^{DCC,(MI-LSA)} \times \mathrm{C}^{DCC,C1}, \mathrm{AB}_{m-1}^{DCC,C1}\right)$$

b. Determine CE Payment in Dollars after application of Haircuts:

$$\mathrm{PD}_m^{DCC,C1,H} = \mathrm{PD}_m^{DCC,C1} \times \left[1 - \frac{m'}{60} \times \mathrm{MaxHct}\left(\mathrm{R}^{DCC,C1}\right)\right]$$

Where:

$m' = min\,(m, 60)$. For counterparties rated below BBB, $m' = 60$.

c. Update DCC Remaining Loss Dollars and DCC Available Balance under the First Priority Contract C1:

$$\mathrm{RLD}_m^{DCC,C1} = max\left(\mathrm{RLD}_m^{DCC,(MI-LSA)} - \mathrm{PD}_m^{DCC,C1,H}, 0\right)$$

$$\mathrm{AB}_m^{DCC,C1} = max\left(\left[\mathrm{AB}_{m-1}^{DCC,C1} - \mathrm{PD}_m^{DCC,C1}\right] \times \left(1 - \mathrm{Exp}_m^{DCC,C1}\right), 0\right)$$

Where:

$\mathrm{Exp}_m^C = 1$ if the Contract has expired, i.e. if the calendar month corresponding to the m^{th} month of the Stress Test is on or after the expiration month (ExpMo^C)

$\mathrm{Exp}_m^C = 0$ otherwise

4. Determine the contractual CE Payment in Dollars under the Second Priority Contract C2. Determine Payment after Haircut. Update Remaining Loss Dollars and DCC Available Balance.

a. Determine CE Payment as the minimum of the Remaining Loss Dollars after C1 Payment (if applicable) times a DCC Loan-Level Coverage Limit (=1 if not MPI Contract) or the previous month's ending DCC Available Balance:

$$\mathrm{PD}_m^{DCC,C2} = min\left(\mathrm{RLD}_m^{DCC,C1} \times \mathrm{C}^{DCC,C2}, \mathrm{AB}_{m-1}^{DCC,C2}\right)$$

b. Determine CE Payment in Dollars after application of Haircuts:

$$\mathrm{PD}_m^{DCC,C2,H} = \mathrm{PD}_m^{DCC,C2} \times \left[1 - \frac{m'}{60} \times \mathrm{MaxHct}\left(\mathrm{R}^{DCC,C2}\right)\right]$$

Where:

$m' = min\,(m, 60)$. For counterparties rated below BBB, $m' = 60$.

c. Update DCC Remaining Loss Dollars and DCC Available Balance under the Second Priority Contract C2:

$$\mathrm{RLD}_m^{DCC,C2} = max\left(\mathrm{RLD}_m^{DCC,C1} - \mathrm{PD}_m^{DCC,C2,H}, 0\right)$$

$$\mathrm{AB}_m^{DCC,C2} = max\left(\left[\mathrm{AB}_{m-1}^{DCC,C2} - \mathrm{PD}_m^{DCC,C2}\right] \times \left(1 - \mathrm{Exp}_m^{DCC,C2}\right), 0\right)$$

Where:

$\mathrm{Exp}_m^C = 1$ if the Contract has expired, i.e. if the calendar month corresponding to the m^{th} month of the Stress Test is on or after the expiration month (ExpMo^C)

$\mathrm{Exp}_m^C = 0$ otherwise

5. Convert Aggregate Limit First and Second Priority Contract receipts in Dollars for each DCC in month m to a percentage of DCC Defaulted UPB:

$$ALPD_m^{DCC} = \frac{\left(PD_m^{DCC,C1,H} \times ELPI^{DCC,C1}\right) + \left(PD_m^{DCC,C2,H} \times ELPI^{DCC,C2}\right)}{DEF_m \times UPB_{m-1}^{LG} \times P^{DCC}}$$

Where:

$ELPI^{DCC,C1} = 0$ if $ELPF^{DCC,C1} = Y$ (Yes, indicating that C1 is an Enterprise Loss Position)
$ELPI^{DCC,C2} = 1$ otherwise

6. Add the Loan Limit CE (MI and LSA) and Aggregate Limit CE (ALPD), each expressed as a share of DCC Defaulted UPB, separately for each DCC to increment the respective Loan Group totals:

$$MI_m^{LG} = MI_m^{LG} + \left(P^{DCC} \times MI_m^{DCC}\right) \text{ for single family Loans; or}$$

$$LSA_m^{LG} = LSA_m^{LG} + \left(P^{DCC} \times LSA_m^{DCC}\right) \text{ for multifamily Loans; and}$$

$$ALCE_m^{LG} = ALCE_m^{LG} + \left(P^{DCC} \times ALPD_m^{DCC}\right) \text{ for both single family and multifamily Loans}$$

3.6.3.6.4.4 Mortgage Credit Enhancement Outputs

[a] Mortgage Credit Enhancement Outputs are set forth in Table 3–49.

TABLE 3–49—SINGLE FAMILY AND MULTIFAMILY CREDIT ENHANCEMENT OUTPUTS

Variable	Description
MI_m	MI payments applied to reduce single family Gross Loss Severity in month m of the Stress Test (as a fraction of Defaulted UPB in month m)
LSA_m	LSA payments applied to reduce multifamily Gross Loss Severity in month m of the Street Test (as a fraction of Defaulted UPB in month m)
$ALCE_m$	Aggregate receipts from all forms of Aggregate Limit Limit Credit Enhancement applied to reduce single- and multifamily Gross Loss Severity in month m of the Stress Test (as a fraction of Defaulted UPB in month m)

[b] MI_m^{LG} or LSA_m^{LG} and $ALCE_m^{LG}$ for months m = 1...120 of the Stress Test are used in section 3.6.3.6.5, Single Family and Multifamily Net Loss Severity, of this Appendix.

3.6.3.6.5 Single Family and Multifamily Net Loss Severity

3.6.3.6.5.1 Single Family and Multifamily Net Loss Severity Procedures

Combine inputs and outputs from Gross Loss Severity and Credit Enhancements (Table 3–42 through Table 3–49) in the following formulas for each Loan Group in month m:

[a] For Conventional single family Loan Groups:

$$LS_m^{SF} = \frac{1}{\left(1+\frac{DR_m}{2}\right)^{\frac{MQ}{6}}} + \frac{\left(\frac{MQ}{12} \times PTR_m\right) + F - MI_m}{\left(1+\frac{DR_m}{2}\right)^{\frac{MF}{6}}} + \frac{R - RP_m - ALCE_m}{\left(1+\frac{DR_m}{2}\right)^{\frac{MF+MR}{6}}}$$

[b] For Government single family Loan Groups, complete the following three steps:

1. Compute a Loss Severity value for FHA-insured loans using the Conventional formula for all government loans. FHA reimbursement rates will be reflected in the value of MI_m, as computed in section 3.6.3.6.4.3, Mortgage Credit Enhancement Procedures, of this Appendix.
2. Compute a Loss Severity value for VA-insured loans as follows for all government loans:

$$LS_m^{VA} = \frac{1 + F + \left(\frac{MQ}{12} \times PTR_m\right) + \left(R - RP_m\right) - 0.30}{\left(1+\frac{DR_m}{2}\right)^{\frac{MF}{6}}}$$

Where:

0.30 is a fixed percentage representing the VA guarantee coverage percentage. (The VA coverage rate is a function of the initial loan size.)

3. Compute Net Loss Severity by combining FHA-insured and VA-insured Loss Severity values as follows:

$$LS_m^{SF,GVT} = \left(\frac{2}{3} \times LS_m^{SF}\right) + \left(\frac{1}{3} \times LS_m^{VA}\right)$$

[c] For multifamily Loan Groups other than FHA-Insured:

$$LS_m^{MF} = \frac{1+\left(\frac{MQ}{12}\times PTR_m\right)}{\left(1+\frac{DR_m}{2}\right)^{\frac{MQ}{6}}} + \frac{\frac{RHC}{2}-LSA_m}{\left(1+\frac{DR_m}{2}\right)^{\frac{MF}{6}}} + \frac{\frac{RHC}{2}-RP-ALCE_m}{\left(1+\frac{DR_m}{2}\right)^{\frac{MF+MR}{6}}}$$

[d] For FHA-Insured multifamily Loan Groups:

$$LS_m^{MF} = 0.03 \text{ (3 percent) for all months}$$

3.6.3.6.5.2 Single Family and Multifamily Net Loss Severity Outputs

Net Loss Severity outputs are set forth in Table 3–50:

TABLE 3–50—SINGLE FAMILY AND MULTIFAMILY LOSS SEVERITY OUTPUTS

Variable	Description
LS_m^{SF}	Loss Severity (as a fraction of Defaulted UPB) for single family loans in month m
LS_m^{MF}	Loss Severity (as a fraction of Defaulted UPB) for multifamily loans in month m

Single family and multifamily Loss Severities for months 1...120 of the Stress Test are used in section 3.6.3.7, Stress Test Whole Loan Cash Flows, of this Appendix.

3.6.3.7 Stress Test Whole Loan Cash Flows

3.6.3.7.1 Stress Test Whole Loan Cash Flow Overview

This section combines the mortgage Amortization Schedules with Default, Prepayment and Net Loss Severity Rates to produce performance-adjusted cash flows for Enterprise Whole Loans in the Stress Test.

3.6.3.7.2 Stress Test Whole Loan Cash Flow Inputs

The inputs required to compute Stress Test Whole Loan Cash Flows for each Loan Group are listed in Table 3–51.

TABLE 3–51—INPUTS FOR FINAL CALCULATION OF STRESS TEST WHOLE LOAN CASH FLOWS

Variable	Description	Source
UPB_m	Aggregate Unpaid Principal Balance in month m = 0...RM	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
NYR_m	Net Yield Rate in month m = 1...RM	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
GF	Guarantee Fee rate (weighted average for Loan Group) (decimal per annum)	RBC Report
PTR_m	Pass-Through Rate in month m = 1...RM	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
SP_m	Aggregate Scheduled Principal (Amortization) in month m = 1...RM	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
PRE_m^{SF} PRE_m^{MF}	Prepaying Fraction of original Loan Group in month m = 1...RM	section 3.6.3.4.4, Single Family Default and Prepayment Outputs and, section 3.6.3.5.4, Multifamily Default and Prepayment Outputs
DEF_m^{SF} DEF_m^{MF}	Defaulting Fraction of original Loan Group in month m = 1...RM	section 3.6.3.4.4, Single Family Default and Prepayment Outputs and, section 3.6.3.5.4, Multifamily Default and Prepayment Outputs
$PERF_m^{SF}$ $PERF_m^{MF}$	Performing Fraction of original Loan Group in month m = 1...RM	section 3.6.3.4.4, Single Family Default and Prepayment Outputs and, section 3.6.3.5.4, Multifamily Default and Prepayment Outputs
FDS	Float Days for Scheduled Principal and Interest	RBC Report
FDP	Float Days for Prepaid Principal	RBC Report
FER_m	Float Earnings Rate in month m = 1...RM	1 week Fed Funds Rate; section 3.3, Interest Rates
LS_m^{SF}	Loss Severity Rate in month m = 1...RM	section 3.6.3.6.5.2, Single Family and Multifamily Net Loss Severity Outputs
FREP	Fraction Repurchased (weighted average for Loan Group) (decimal)	RBC Report

3.6.3.7.3 Stress Test Whole Loan Cash Flow Procedures

[a] Calculate Stress Test whole loan cash flows using the following nine steps:

1. Calculate Scheduled Principal Received (SPR) in month m:

$$SPR_m = max\left(SP_m, 0\right) \times \left(PERF_m + PRE_m\right)$$

Note: Scheduled Principal Received is zero, not negative, when amortization is negative.

2. Calculate Net Interest Received (NIR) in month m. Any interest shortfall due to Negative Amortization reduces Net Yield directly. *Note:* NIR includes loans that default in month m, because lost interest is included in Credit Losses in step 6) of this section. (*See* section 3.6.3.6, Calculation of Single Family and Multifamily Mortgage Losses, of this Appendix.)

$$NIR_m = \left[\left(UPB_{m-1} \times \frac{NYR_m}{12}\right) + min\left(SP_m, 0\right)\right] \times PERF_{m-1}$$

3. Calculate Prepaid Principal Received (PPR) in month m:

$$PPR_m = UPB_m \times PRE_m$$

4. Calculate newly Defaulted Principal (DP) in month m:

$$DP_m = UPB_{m-1} \times DEF_m$$

5. Calculate Recovery Principal Received (RPR) on account of loans that Defaulted in month m:

$$RPR_m = UPB_{m-1} \times DEF_m \times \left(1 - LS_m\right)$$

6. Calculate Credit Losses (CL) on account of loans that Defaulted in month m:

$$CL_m = UPB_{m-1} \times DEF_m \times LS_m$$

In addition, if m = RM and $UPB_{RM} > 0$ then,

$$CL_{RM} = \left(UPB_{RM} \times PERF_{RM}\right) + \left(UPB_{RM-1} \times DEF_{RM} \times LS_{RM}\right),$$

and

$$PUPB_{RM} = 0$$

7. Calculate Performing Loan Group UPB in month m ($PUPB_m$), including $PUPB_0$.

Note: All loans are assumed to be performing in month 0; therefore $PUPB_0 = UPB_0$.

$$PUPB_m = UPB_m \times PERF_m$$

8. Calculate Total Principal Received (TPR) and Total Interest Received (TIR) in month m:

$$TPR_m = SPR_m + PPR_m + RPR_m$$

$$TIR_m = NIR_m$$

9. For Sold Loans, calculate the following cash flow components:

a. Guarantee Fee (GF) received in month m:

$$GF_m = UPB_{m-1} \times \frac{GFR}{12} \times \left(PERF_m + PRE_m\right)$$

b. Float Income (FI) received in month m:

$$FI_m = \left[\left(\left(SPR_m + NIR_m - GF_m\right) \times \frac{FDS}{365}\right) + \left(PPR_m \times \frac{FDP}{365}\right)\right] \times FER_m - PIS_m$$

Where:

Prepayment Interest Shortfall (PIS) in month m is:

$$PIS_m = UPB_{m-1} \times PRE_m \times \frac{PTR_m}{12} \quad \text{if } FDP \geq 30$$

$$PIS_m = UPB_{m-1} \times PRE_m \times \frac{PTR_m}{24} \quad \text{if } 15 \leq FDP < 30$$

3.6.3.7.4 Stress Test Whole Loan Cash Flow Outputs

The Whole Loan Cash Flows in Table 3–52 are used to prepare pro forma balance sheets and income statements for each month of the Stress Period (*see* section 3.10 Operations, Taxes and Accounting, of this Appendix). For Retained Loan groups, cash flows consist of Scheduled Principal, Prepaid Principal, Defaulted Principal, Credit Losses, and Interest. For Sold Loan groups, cash flow consists of Credit Losses, Guarantee Fees and Float Income. For Repurchased MBSs, cash flows are allocated according to the Fraction Repurchased. Table 3–52 covers all cases; for Retained Loans FREP = 1.0.

TABLE 3–52—OUTPUTS FOR WHOLE LOAN CASH FLOWS

Variable	Description
SPR_m	Scheduled Principal Received in month m = 1...RM
PPR_m	Prepaid Principal Received in month m = 1...RM
DP_m	Defaulted Principal in month m = 1...RM
CL_m	Credit Losses in month m = 1...RM
$PUPB_m$	Performing Loan Group UPB in month m = 0...RM
TPR_m	Total Principal Received in month m = 1...RM
TIR_m	Total Interest Received in month m = 1...RM
GF_m	Guarantee Fees received in month m = 1...RM
FI_m	Float Income received in month m = 1...RM

TABLE 3–53—ADDITIONAL OUTPUTS FOR REPURCHASED MBSS

Variable	Quantity	Description
$STPR_m$	$FREP \times (SPR_m + PPR_m + DP_m)$	Enterprise's portion of Total Principal Received in months m = 1...RM, reflecting its fractional ownership of the MBS
$STIR_m$	$FREP \times (TIR_m - GF_m)$	Enterprise's portion of Total Interest Received (at the Pass-Through Rate) in months m = 1...RM, reflecting its fractional ownership of the MBS

TABLE 3–53—ADDITIONAL OUTPUTS FOR REPURCHASED MBSS—Continued

Variable	Quantity	Description
$SPUPB_m$	$FREP \times PUPB_m$	Enterprise's portion of the Performing UPB of the repurchased MBS in months m = 0...RM, reflecting its fractional ownership of the MBS

3.6.3.8 Whole Loan Accounting Flows

3.6.3.8.1 Whole Loan Accounting Flows Overview

[a] For accounting purposes, cash flows are adjusted to reflect (1) the value over time of discounts, premiums and fees paid or received (Deferred Balances) when an asset was acquired; and (2) the fact that mortgage interest is paid in arrears, i.e. it is received in the month after it is earned. In the Stress Test calculations, payments are indexed by the month in which they are received. Therefore, interest received in month m was earned in month $m-1$. However, principal is accounted for in the month received.

[b] Deferred Balances are amortized over the remaining life of the asset. Therefore, these calculations go beyond the end of the Stress Test if the Remaining Maturity (RM) is greater than the 120 months of the Stress Test. The projection of cash flows beyond the end of the Stress Test is discussed in the individual sections where the cash flows are first calculated. In general, for interest rate indexes, monthly Prepayment rates and monthly Default rates, the value for m = 120 is used for all months $120 < m \le RM$, but LS = 0 for m > 120.

3.6.3.8.2 Whole Loan Accounting Flows Inputs

The inputs in Table 3–54 are required to compute Accounting Flows:

TABLE 3–54—INPUTS FOR WHOLE LOAN ACCOUNTING FLOWS

Variable	Description	Source
RM	Remaining Term to Maturity in months	RBC Report
UPD_0	Unamortized Premium (positive) or Discount (negative) (Deferred Balances) for the Loan Group at the start of the Stress Test	RBC Report
NYR_0	Net Yield Rate at time zero	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
$PUPB_m$	Performing Loan Group UPB in months m = 0...RM	section 3.6.3.7.4, Stress Test Whole Loan Cash Flow Outputs
PTR_0	Pass-Through Rate at time zero	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
$SPUPB_m$	Security Performing UPB in months m = 0...RM	section 3.6.3.7.4, Stress Test Whole Loan Cash Flow Outputs
$SUPD_0$	Security Unamortized Premium (positive) or Discount (negative) associated with the repurchase price of a Repurchased MBS (aggregate over all purchases of the same MBS)	RBC Report

3.6.3.8.3 Whole Loan Accounting Flows Procedures

3.6.3.8.3.1 Accounting for Retained and Sold Whole Loans

[a] Complete the following three steps to account for Retained and Sold loans:

1. Compute Allocated Interest in month m (AI^m) as follows:

$$AI_m = PUPB_{m-1} \times \frac{NYR_0}{12}$$

Note: Allocated Interest is used only to determine the allocation of Amortization Expense over time, not to generate actual cash flows)

2. Calculate the monthly Internal Rate of Return (IRR) that equates the adjusted cash flows (actual principal plus Allocated Interest) to the Initial Book Value (BV_0) of the Loan Group. A single IRR is used for all months m. Solve for IRR such that:

$$BV_0 = \sum_{m=1}^{RM} \frac{ACF_m}{(1+IRR)^m}$$

Where:

$$BV_0 = PUPB_0 + UPD_0$$

$$ACF_m = AI_m - PUPB_m + PUPB_{m-1}$$

3. Calculate the monthly Amortization Expense for each month m:

a. If $BV_0 < 0$, or if $12 \times IRR > 1.0$ (100%), or if

$$BV_0 > \sum_{m=1}^{RM} ACF_m$$

then the full amount of UPD_0 is realized in the first month ($AE_1 = -UPD_0$)

b. Otherwise:

$$AE_m = (BV_{m-1} \times IRR) - AI_m$$
$$\text{if } PUPB_m > 0$$
$$AE_m = -UPD_{m-1} \text{ if } PUPB_m = 0$$
$$UPD_m = UPD_{m-1} + AE_m$$
$$BV_m = PUPB_m + UPD_m$$

3.6.3.8.3.2 Additional Accounting for Repurchased MBSs

[a] Complete the following three steps to account for Repurchased MBSs:

1. Compute Security Allocated Interest in month m (SAI_m) as follows:

$$SAI_m = SPUPB_{m-1} \times \frac{PTR_0}{12}$$

Note: Security Allocated Interest is used only to determine the allocation of Security Amortization Expense over time, not to generate actual cash flows.

2. Calculate the monthly Internal Rate of Return (IRR) that equates the adjusted cash flows (actual principal plus Allocated Interest) to the Initial Book Value (SBV_0) of the Loan Group. A single IRR is used for all months m. Solve for IRR such that:

$$SBV_0 = \sum_{m=1}^{RM} \frac{SACF_m}{(1+IRR)^m}$$

Where:

$SBV_0 = SPUPB_0 + SUPD_0$
$SACF_m = SAI_m - SPUPB_m + SPUPB_{m-1}$

3. Calculate the monthly Security Amortization Expense for each month m:

a. If $SBV_0 < 0$, or if $12 \times IRR > 1.0$ (100%), or if

$$SBV_0 > \sum_{m=1}^{RM} SACF_m$$

then the full amount of $SUPD_0$ is realized in the first month ($SAE_1 = -SUPD_0$).

b. Otherwise:

$$SAE_m = (SBV_{m-1} \times IRR) - SAI_m \quad \text{if } SPUPB_m > 0$$

$$SAE_m = -SUPD_{m-1} \text{ if } SPUPB_m = 0$$

$$SUPD_m = SUPD_{m-1} + SAE_m$$

$$SBV_m = SPUPB_m + SUPD_m$$

3.6.3.8.4 Whole Loan Accounting Flows Outputs

Whole loan accounting flows outputs are set forth in Table 3–55. Amortization Expense for months m = 1...RM are used in section 3.10, Operations, Taxes, and Accounting, of this Appendix.

TABLE 3–55—OUTPUTS FOR WHOLE LOAN ACCOUNTING FLOWS

Variable	Description
AE_m	Amortization Expense for months m = 1...RM
SAE_m	Security Amortization Expense for months m = 1...RM

3.6.4 Final Whole Loan Cash Flow Outputs

The final outputs for section 3.6, Whole Loan Cash Flows, of this Appendix are as specified in Table 3–52, and Table 3–55.

3.7 Mortgage-Related Securities Cash Flows

3.7.1 Mortgage-Related Securities Overview

[a] Mortgage-Related Securities (MRSs) include Single Class MBSs, Multi-class MBSs (REMICs or Collateralized Mortgage Obligations (CMOs)), Mortgage Revenue Bonds (MRBs), and Derivative Mortgage Securities such as Interest-Only and Principal-Only Stripped MBSs. MBSs and Derivative Mortgage Securities are issued by the Enterprises, Ginnie Mae and private issuers. MRBs are issued by State and local governments or their instrumentalities. For computational purposes, certain Asset-Backed Securities (ABS) backed by mortgages (Mortgage ABSs backed by manufactured housing loans, second mortgages or home equity loans) are treated as REMICs in the Stress Test.

[b] Cash flows from Single Class MBSs represent the pass-through of all principal and interest payments, net of servicing and guarantee fees, on the underlying pools of mortgages. Cash flows from Multi-Class MBSs and Derivative Mortgage Securities represent a specified portion of the cash flows produced by an underlying pool of mortgages and/or Mortgage-Related Securities, determined according to rules set forth in offering documents for the securities. MRBs may have specific maturity schedules and call provisions, whereas MBSs have only expected maturities and, in most cases, no issuer call provision (other than ‘‘cleanup calls’’ if the pool balance becomes quite small). However, the timing of principal payments for MRBs is still closely related to that of their underlying mortgage collateral. The Stress Test treats most MRBs in a manner similar to single class MBSs. Finally, a small number of Enterprise and private label REMIC securities for which modeling information is not readily available and which are not modeled by a commercial information service (referred to as ‘‘miscellaneous MRS’’) are treated separately.

[c] In addition to reflecting the defaults of mortgage borrowers during the Stress Period, the Stress Test considers the possibility of issuer Default on Mortgage-Related Securities. Credit impairments throughout the Stress Period are based on the rating of these securities, and are modeled by reducing contractual interest payments and ‘‘writing down’’ principal. No Credit Losses are assumed for the Enterprise's own securities and Ginnie Mae securities (*see* section 3.5.3, Counterparty Defaults Procedures, of this Appendix).

[d] The calculation of cash flows for Mortgage-Related Securities requires information from the Enterprises identifying their holdings, publicly available information characterizing the securities, and information on the interest rate, mortgage performance and credit rating (for rated securities).

[e] Cash and accounting flows—monthly principal and interest payments and amortization expense—are produced for each month of the Stress Period for each security. (Principal- and interest-only securities pay principal or interest respectively.) These cash flows are input to the Operations, Taxes, and Accounting component of the Stress Test.

3.7.2 Mortgage-Related Securities Inputs

3.7.2.1 Inputs Specifying Individual Securities

3.7.2.1.1 Single Class MBSs

The information in Table 3–56 is required for single class MBSs held by an Enterprise at the start of the Stress Test. This information identifies the Enterprise's holdings and describes the MBS and the underlying mortgage loans.

TABLE 3–56—RBC REPORT INPUTS FOR SINGLE CLASS MBS CASH FLOWS

Variable	Description
Pool Number	A unique number identifying each mortgage pool
CUSIP Number	A unique number assigned to publicly traded securities by the Committee on Uniform Securities Identification Procedures
Issuer	Issuer of the mortgage pool
Original UPB Amount	Original pool balance multiplied by the Enterprise's percentage ownership.
Current UPB Amount	Initial Pool balance (at the start of the Stress Test), multiplied by the Enterprise's percentage ownership
Product Code	Mortgage product type for the pool
Security Rate Index	If the rate on the security adjusts over time, the index that the adjustment is based on
Unamortized Balance	The sum of all unamortized discounts, premiums, fees, commissions, etc. Components of the balance that amortize as a gain (like discounts) should be positive. Components that amortize as a cost or as a loss (premiums, fees, etc.) should be negative.
Wt Avg Original Amortization Term	Original amortization term of the underlying loans, in months (weighted average for underlying loans)
Wt Avg Remaining Term of Maturity	Remaining Maturity of the underlying loans at the start of the Stress Test (weighted average for underlying loans)
Wt Avg Age	Age of the underlying loans at the start of the Stress Test (weighted average for underlying loans)
Wt Avg Current Mortgage Interest rate	Mortgage Interest Rate of the underlying loans at the start of the Stress Test (weighted average for underlying loans)
Wt Avg Pass-Through Rate	Pass-Through Rate of the underlying loans at the start of the Stress Test (weighted average for underlying loans)
Wt Avg Original Mortgage Interest Rate	The current UPB weighted average Mortgage Interest Rate in effect at Origination for the loans in the pool

TABLE 3–56—RBC REPORT INPUTS FOR SINGLE CLASS MBS CASH FLOWS—Continued

Variable	Description
Security Rating	The most current rating issued by any Nationally Recognized Statistical Rating Organization (NRSRO) for this security, as of the reporting date. In the case of a ''split'' rating, the lowest rating should be given.
Wt Avg Gross Margin	Gross margin for the underlying loans (ARM MBS only) (weighted average for underlying loans)
Wt Avg Net Margin	Net margin (used to determine the security rate for ARM MBS) (weighted average for underlying loans)
Wt Avg Rate Reset Period	Rate reset period in months (ARM MBS only) (weighted average for underlying loans)
Wt Avg Rate Reset Limit	Rate reset limit up/down (ARM MBS only) (weighted average for underlying loans)
Wt Avg Life Interest Rate Ceiling	Maximum rate (lifetime cap) (ARM MBS only) (weighted average for underlying loans)
Wt Avg Life Interest Rate Floor	Minimum rate (lifetime floor) (ARM MBS only) (weighted average for underlying loans)
Wt Avg Payment Reset Period	Payment reset period in months (ARM MBS only) (weighted average for underlying loans).
Wt Avg Payment Reset Limit	Payment reset limit up/down (ARM MBS only) (weighted average for underlying loans)
Wt Avg Lookback Period	The number of months to look back from the interest rate change date to find the index value that will be used to determine the next interest rate (ARM MBS only) (weighted average for underlying loans)
Wt Avg Negative Amortization Cap	The maximum amount to which the balance can increase before the payment is recast to a fully amortizing amount. It is expressed as a fraction of the original UPB. (ARM MBS only) (weighted average for underlying loans)
Wt Avg Initial Interest Rate Period	Number of months between the loan origination date and the first rate adjustment date (ARM MBS only) (weighted average for underlying loans)
Wt Avg Unlimited Payment Reset Period	Number of months between unlimited payment resets i.e., not limited by payment caps, starting with Origination date (ARM MBS only) (weighted average for underlying loans)
Notional Flag	Indicates that amounts reported in Original UPB Amount and Current UPB Amount are notional
UPB Scale Factor	Factor applied to the current UPB that offsets any timing adjustments between the security level data and the Enterprise's published financials
Whole Loan Modeling Flag	Indicates that the Current UPB Amount and Unamortized Balance associated with this Repurchased MBS are included in the Wt Avg Percent Repurchased and Security Unamortized Balance fields
FAS 115 Classification	The financial instrument's classification according to FAS 115
$HPGR_K$	Vector of House Price Growth Rates for quarters q=1...40 of the Stress Period.

3.7.2.1.2 Multi-Class MBSs and Derivative Mortgage Securities

[a] The information in Table 3–57 is required for Multi-Class MBSs and Derivative Mortgage Securities held by an Enterprise at the start of the Stress Test. This information identifies the MBS and an Enterprise's holdings.

TABLE 3–57—RBC REPORT INPUTS FOR MULTI-CLASS AND DERIVATIVE MBS CASH FLOWS

Variable	Description
CUSIP Number	A unique number assigned to publicly traded securities by the Committee on Uniform Securities Identification Procedures
Issuer	Issuer of the security: FNMA, FHLMC, GNMA or other
Original Security Balance	Original principal balance of the security (notional amount for Interest-Only securities) at the time of issuance, multiplied by the Enterprise's percentage ownership
Current Security Balance	Initial principal balance, or notional amount, at the start of the Stress Period multiplied by the Enterprise's percentage ownership
Current Security Percentage Owned	The percentage of a security's total current balance owned by the Enterprise
Unamortized Balance	The sum of all unamortized discounts, premiums, fees, commissions, etc. Components of the balance that amortize as a gain (like discounts) should be positive. Components that amortize as a cost or as a loss (premiums, fees, etc.) should be negative.

[b] The Stress Test requires sufficient information about the cash flow allocation rules among the different classes of a Multi-Class MBS to determine the cash flows for the individual class(es) owned by an Enterprise, including descriptions of the component classes of the security, the underlying collateral, and the rules directing cash flows to the component classes. This information is obtained from offering documents or securities data services. In the Stress Test, this information is used either as an input to a commercial modeling service or, for securities that are not so modeled, to derive an approximate modeling treatment as described more fully in this section.

[c] If a Derivative Mortgage Security is itself backed by one or more underlying

securities, sufficient information is required for each underlying security as described in the preceding paragraph.

3.7.2.1.3 Mortgage Revenue Bonds and Miscellaneous MRSs

[a] The Stress Test requires two types of information for Mortgage Revenue Bonds and miscellaneous MRS held by an Enterprise at the start of the Stress Test: information identifying the Enterprise's holdings and the contractual terms of the securities. The inputs required for these instruments are set forth in Table 3–58.

TABLE 3–58—RBC REPORT INPUTS FOR MRBS AND DERIVATIVE MBS CASH FLOWS

Variable	Description
CUSIP Number	A unique number assigned to publicly traded securities by the Committee on Uniform Securities Identification Procedures
Original Security Balance	Original principal balance, multiplied by the Enterprise's percentage ownership
Current Security Balance	Initial principal balance (at start of Stress Period), multiplied by the Enterprise's percentage ownership
Unamortized Balance	The sum of all unamortized discounts, premiums, fees, commissions, etc. Components of the balance that amortize as a gain (like discounts) should be positive. Components that amortize as a cost or as a loss (premiums, fees, etc.) should be negative.
Issue Date	The Issue Date of the security
Maturity Date	The stated Maturity Date of the security
Security Interest Rate	The rate at which the security earns interest, as of the reporting date
Principal Payment Window Starting Date, Down-Rate Scenario	The month in the Stress Test that principal payment is expected to start for the security under the statutory ''down'' interest rate scenario, according to Enterprise projections
Principal Payment Window Ending Date, Down-Rate Scenario	The month in the Stress Test that principal payment is expected to end for the security under the statutory ''down'' interest rate scenario, according to Enterprise projections
Principal Payment Window Starting Date, Up-Rate Scenario	The month in the Stress Test that principal payment is expected to start for the security under the statutory ''up'' interest rate scenario, according to Enterprise projections
Principal Payment Window Ending Date, Up-Rate Scenario	The month in the Stress Test that principal payment is expected to end for the security under the statutory ''up'' interest rate scenario, according to Enterprise projections
Security Rating	The most current rating issued by any Nationally Recognized Statistical Rating Organization (NRSRO) for this security, as of the reporting date. In the case of a ''split'' rating, the lowest rating should be given.
Security Rate Index	If the rate on the security adjusts over time, the index on which the adjustment is based
Security Rate Index Coefficient	If the rate on the security adjusts over time, the coefficient is the number used to multiply by the value of the index
Security Rate Index Spread	If the rate on the security adjusts over time, the spread is added to the value of the index multiplied by the coefficient to determine the new rate
Security Rate Adjustment Frequency	The number of months between rate adjustments
Security Interest Rate Ceiling	The maximum rate (lifetime cap) on the security
Security Interest Rate Floor	The minimum rate (lifetime floor) on the security

[b] The Payment Window Starting and Ending Dates are projected by the Enterprise on the basis of prospectus information or simulations from a dealer in the securities or other qualified source, such as the structured finance division of an accounting firm, for the two statutory scenarios.

3.7.2.2 Interest Rate Inputs

Interest rates projected for each month of the Stress Period are used to calculate principal amortization and interest payments for ARM MBSs and MRBs, and for Derivative Mortgage Securities with indexed coupon rates. This information is produced in section 3.3, Interest Rates, of this Appendix.

3.7.2.3 Mortgage Performance Inputs

Default and Prepayment rates for the loans underlying a single- or multiclass MBS are computed according to the characteristics of the loans as specified in this section 3.7.2, Mortgage-Related Securities Inputs. LTV and Census Region are not uniquely specified for the loans underlying a given security; instead, the Prepayment and Default rates are averaged over all LTV categories, weighted according to the distribution of LTVs given in Table 3–59. (This weighting applies to Time Zero, i.e., the start of the Stress Test; the weightings will change over time as individual LTV groups pay down at different rates. *See* section 3.7.3, Mortgage-Related Securities Procedures, of this Appendix.) Instead of Census Division, the national average HPI is used for all calculations in this section.

TABLE 3–59—AGGREGATE ENTERPRISE AMORTIZED ORIGINAL LTV ($AOLTV_0$) DISTRIBUTION [1]

Original LTV	UPB Distribution	Wt Avg AOLTV for Range
00<LTV<=60	17.00%	48.35%
60<LTV<=70	14.15%	66.35%
70<LTV<=75	14.99%	73.81%
75<LTV<=80	26.84%	79.30%
80<LTV<=90	14.78%	88.31%
90<LTV<=95	10.89%	94.67%
95<LTV<=100	1.35%	97.51%
100<LTV	0.00%	100.02%

[1] Source: Combined Enterprise Portfolios as of the second quarter, 2000.

Note: Amortized Original LTV (also known as the ''current-loan-to-original-value'' ratio) is the Original LTV adjusted for the change in UPB but not for changes in property value. Because of its small size the LTV>100 group is not used in the calculation.

3.7.2.4 Third-Party Credit Inputs

For securities not issued by the Enterprise or Ginnie Mae, issuer Default risk is reflected by haircutting the instrument cash flows based on the rating of the security, as described in section 3.5, Counterparty Defaults, of this Appendix.

3.7.3 Mortgage-Related Securities Procedures

The following sections describe the calculations for (1) single class MBSs, (2) Multi-Class MBSs and derivative mortgage securities, and (3) MRBs and miscellaneous MRS.

3.7.3.1 Single Class MBSs

[a] The calculation of cash flows for single class MBSs is based on the procedures outlined earlier in section 3.6, Whole Loan Cash Flows, of this Appendix. The collateral (i.e., the mortgage pool) underlying each MBS is treated as one single family Loan Group with characteristics equal to the weighted average characteristics of the underlying loans.

[b] For each MBS, compute the scheduled cash flows specified in Table 3–33, as directed in section 3.6.3.3.3, Mortgage Amortization Schedule Procedures of this Appendix, with the following exceptions and clarifications:

1. The Net Yield Rate (NYR) is not used in the MBS calculation. Instead, the Pass-Through Rate (for Fixed-Rate MBSs) and INDEX + Net Margin (for Adjustable-Rate MBSs) are used.
2. PMT is not a direct input for MBSs. (That is, it is not specified in the RBC Report.) Instead, compute PMT from UPB, MIR and remaining amortizing term $AT - A_0$, using the standard mortgage payment formula (and update it as appropriate for ARMs, as described in the Whole Loan calculation).
3. For ARM MBS, interest rate and monthly payment adjustments for the underlying loans are calculated in the same manner as they are for ARM Loan Groups.
4. MBSs backed by Biweekly mortgages, GPMs, TPMs, GEMs, and Step mortgages are mapped into mortgage types as described in section 3.6, Whole Loan Cash Flows, of this Appendix.

[c] Use the Loan Group characteristics to generate Default and Prepayment rates as described in section 3.6.3.4.3, Single Family Default and Prepayment Procedures, of this Appendix. For the following explanatory variables that are not specified for MBSs, proceed as follows:

1. For fixed rate Ginnie Mae certificates and the small number of multifamily MBS held by the Enterprises, use the model coefficients for Government Loans. For loans underlying Ginnie Mae ARM certificates, use the conventional ARM model coefficients.
2. Set Investor Fraction (IF) = 7.56%
3. Set Relative Loan Size (RLS) = 1.0. For Ginnie Mae certificates, use RLS = 0.75.
4. For LTV_{ORIG} of the underlying loans: Divide the MBS's single weighted average Loan Group into several otherwise identical Loan Groups (''LTV subgroups''), one for each Original LTV range specified in Table 3–59. UPB_0 for each of these LTV subgroups is the specified percentage of the aggregate UPB_0. $AOLTV_0$ for each subgroup is also specified in Table 3–59. For Ginnie Mae certificates, use only the $95 < LTV \leq 100$ LTV category and its associated weighted average LTV.
5. For each LTV subgroup, compute LTV_0 as follows:

$$LTV_0 = AOLTV_0 \times \left(\frac{HPI_{ORIG}}{HPI_{AQ'_0}} \right)^{\frac{AQ_0}{AQ'_0}}$$

Where:

HPI = the national average HPI figures in Table 3–60 (updated as necessary from subsequent releases of the OFHEO HPI).

A_0 = weighted average age in months of the underlying loans immediately prior to the start of the Stress Test.

AQ_0 = weighted average age in quarters of the underlying loans immediately prior to the start of the Stress Test. $AQ_0 = int\,(A_0/3)$.

$AQ'_0 = AQ_0$ minus the number of whole quarters between the most recently available HPI at the start of the Stress Test and time zero.

If $AQ'_0 \leq 0$, then $LTV_0 = AOLTV_0$.

TABLE 3–60—HISTORICAL NATIONAL AVERAGE HPI [1]

Quarter [2]	HPI	Quarter	HPI	Quarter	HPI
1975Q1	62.45	1983Q4	116.63	1992Q3	177.94
1975Q2	63.50	1984Q1	118.31	1992Q4	178.71
1975Q3	62.85	1984Q2	120.40	1993Q1	178.48
1975Q4	63.92	1984Q3	121.68	1993Q2	179.89
1976Q1	65.45	1984Q4	122.94	1993Q3	180.98
1976Q2	66.73	1985Q1	124.81	1993Q4	182.38
1976Q3	67.73	1985Q2	126.91	1994Q1	183.35
1976Q4	68.75	1985Q3	129.38	1994Q2	183.95
1977Q1	70.70	1985Q4	131.20	1994Q3	184.43
1977Q2	73.34	1986Q1	133.77	1994Q4	184.08
1977Q3	75.35	1986Q2	136.72	1995Q1	184.85
1977Q4	77.71	1986Q3	139.37	1995Q2	187.98
1978Q1	79.96	1986Q4	141.99	1995Q3	190.81
1978Q2	82.75	1987Q1	145.07	1995Q4	192.42
1978Q3	85.39	1987Q2	147.88	1996Q1	194.80
1978Q4	87.88	1987Q3	150.21	1996Q2	195.00
1979Q1	91.65	1987Q4	151.57	1996Q3	195.78
1979Q2	94.26	1988Q1	154.26	1996Q4	197.48
1979Q3	96.24	1988Q2	157.60	1997Q1	199.39

TABLE 3–60—HISTORICAL NATIONAL AVERAGE HPI [1]—Continued

Quarter [2]	HPI	Quarter	HPI	Quarter	HPI
1979Q4	98.20	1988Q3	159.25	1997Q2	201.00
1980Q1	100.00	1988Q4	160.96	1997Q3	203.94
1980Q2	100.86	1989Q1	163.10	1997Q4	206.97
1980Q3	104.27	1989Q2	165.33	1998Q1	210.09
1980Q4	104.90	1989Q3	169.09	1998Q2	212.37
1981Q1	105.69	1989Q4	170.74	1998Q3	215.53
1981Q2	107.85	1990Q1	171.42	1998Q4	218.09
1981Q3	109.21	1990Q2	171.31	1999Q1	220.80
1981Q4	109.38	1990Q3	171.85	1999Q2	224.32
1982Q1	111.02	1990Q4	171.03	1999Q3	228.46
1982Q2	111.45	1991Q1	172.41	1999Q4	232.41
1982Q3	110.91	1991Q2	173.14	2000Q1	235.91
1982Q4	111.96	1991Q3	173.14	2000Q2	240.81
1983Q1	114.12	1991Q4	175.46	2000Q3	245.15
1983Q2	115.33	1992Q1	176.62		
1983Q3	116.15	1992Q2	176.26		

[1] These numbers are updated as necessary from subsequent releases of the HPI after 2000Q3.
[2] *Note:* If the underlying loans were originated before 1975, use the HPI from 1975Q1 as HPI_{ORIG}.

6. For each quarter q of the Stress Test, use UPB_q and the house price growth rates from the Benchmark regional time period:

$$LTV_q = LTV_0 \times \frac{\left(\frac{UPB_{m=3q-3}}{UPB_0}\right)}{exp\sum_{k=1}^{q} HPGR_K}$$

7. Generate Default, Prepayment and Performance vectors PRE_m, DEF_m and $PERF_m$ for each LTV subgroup. When LTV_{ORIG} is used as a categorical variable, use the corresponding range defined for each LTV subgroup in Table 3–59. For LTV subgroup 95 < LTV < 100, use 90 < LTV_{ORIG} in Table 3–35.

[d] For each LTV subgroup, do not compute any Loss Severity or Credit Enhancement amounts. MBS investors receive the full UPB of defaulted loans.

[e] Compute Total Principal Received (TPR), Total Interest Received (TIR), and Amortization Expense (AE) for each LTV subgroup as directed in section 3.6.3.7.3, Stress Test Whole Loan Cash Flow Procedures and section 3.6.3.8.3, Whole Loan Accounting Flows Procedures, of this Appendix, with the following exception:

1. For Net Interest Received (NIR), do not use the Net Yield Rate (NYR_m). Instead, use the Pass-Through Rate (PTR_m) for Fixed Rate Loans, and $INDEX_{m-1-LB}$ + Wt Avg Net Margin, subject to rate resets as described in section 3.6.3.3.3, Mortgage Amortization Schedule Procedures, [a]1.b.3) of this Appendix, for ARMs.
2. Calculate Recovery Principal Received using a Loss Severity rate of zero (LS = 0).

[f] Sum over the LTV subgroups to obtain the original MBS's TPR, TIR and AE for m = 1...RM.

[g] Apply counterparty Haircuts in each month m as follows:

1. Compute:

$$HctFac_m = \frac{m'}{60} \times MaxHct(R)$$

Where:

m′ = *min* (m, 60)
R = MBS credit rating

2. Compute:

$$HctAmt_m = \left(TPR_m + TIR_m\right) + HctFac_m$$

[h] The resulting values, for each MBS, of TPR, TIR, AE, and HctAmt for months m = 1...RM are used in the section 3.10, Operations, Taxes, and Accounting, of this Appendix.

3.7.3.2 REMICs and Strips

[a] Cash flows for REMICs and Strips are generated according to standard securities industry procedures, as follows:

1. From the CUSIP number of the security, identify the characteristics of the underlying collateral. This is facilitated by using a securities data service.
2. Calculate the cash flows for the underlying collateral in the manner described for whole loans and MBS, based on Stress Test interest, Default, and Prepayment rates appropriate for the collateral.
3. Calculate cash flows for the Multiclass MBS using the allocation rules specified in the offering materials.
4. Determine the cash flows attributable to the specific securities held by an Enterprise, applying the Enterprise's ownership percentage.
5. For securities not issued by the Enterprise or Ginnie Mae, reduce cash flows by applying the Haircuts specified in section 3.5, Counterparty Defaults, of this Appendix.

[b] If a commercial information service is used for steps [a] 1 through 4 of this section, the information service may model mortgage product types beyond those described for Whole Loans in section 3.6, Whole Loan Cash Flows, and ARM indexes in addition to those listed in section 3.3, Interest Rates, of this Appendix. In such cases, the cash flows used are generated from the actual data used by the information service for the underlying security.

3.7.3.3 Mortgage Revenue Bonds and Miscellaneous MRS

[a] Cash flows for mortgage revenue bonds and miscellaneous MRS are computed as follows:

1. From the start of the Stress Test until the first principal payment date at the start of the Principal Payment Window, the security pays coupon interest at the Security Interest Rate, adjusted as necessary according to the Security Rate Index and Adjustment information in Table 3–58, but pays no principal.
2. During the Principal Payment Window, the security pays principal and interest equal to the aggregate cash flow from a level pay mortgage whose term is equal to the length of the Principal Payment Window and whose interest rate is the Security Interest Rate. If the Security Interest Rate is zero (as in the case of

zero-coupon MRBs), then the security pays principal only in level monthly payment amounts equal to the Current Security Balance divided by the length of the Principal Payment Window.

3. For securities not issued by the Enterprise or Ginnie Mae, reduce cash flows by applying the Haircuts specified in section 3.5, Counterparty Defaults, of this Appendix.

3.7.3.4 Accounting

Deferred balances are amortized as described in section 3.6.3.8, Whole Loan Accounting Flows, of this Appendix, using the Pass-Through Rate (or Security Interest Rate for MRBs) rather than the Net Yield Rate. For principal-only strips and zero-coupon MRBs, assume Allocated Interest is zero. If the conditions in section 3.6.3.8.3.1[a]3.a. of this Appendix, apply, do not realize the full amount in the first month. Instead, amortize the deferred balances using a straight line method over a period from the start of the Stress Test through the latest month with a non-zero cash flow.

3.7.4 Mortgage-Related Securities Outputs

[a] The outputs for MBS and MRS Cash Flows, found in Table 3–55, are analogous to those specified for Whole Loans in section 3.6.4, Final Whole Loan Cash Flow Outputs, of this Appendix, which are produced for each security for each month.

TABLE 3–61—OUTPUTS FOR MORTGAGE-RELATED SECURITIES

Variable	Description
TPR_m	Total Principal Received in month m = 1...RM
TIR_m	Total Interest Received in month m = 1...RM
$HctAmt_m$	Total Haircut amount in month m = 1...RM
AE_m	Amortization Expense for months m = 1...RM

[b] These outputs are used as inputs to the Operations, Taxes, and Accounting component of the Stress Test, which prepares pro forma financial statements. *See* section 3.10, Operations, Taxes, and Accounting, of this Appendix.

3.8 Nonmortgage Instrument Cash Flows

3.8.1 Nonmortgage Instrument Overview

[a] The Nonmortgage Instrument Cash Flows component of the Stress Test produces instrument level cash flows and accounting flows (accruals and amortization) for the 120 months of the Stress Test for:

1. Debt
2. Nonmortgage investments
3. Guaranteed Investment Contracts (GICs)
4. Preferred stock
5. Derivative contracts
   a. Debt-linked derivative contracts
   b. Investment-linked derivative contracts
   c. Mortgage-linked derivative contracts
   d. Derivative contracts that hedge forecasted transactions
   e. Non-linked derivative contracts

[b] Although mortgage-linked derivative contracts are usually linked to mortgage assets rather than nonmortgage instruments, they are treated similarly to debt-linked and investment-linked derivative contracts and, therefore, are covered in this section.

[c] Debt, nonmortgage investments, and preferred stock cash flows include interest (or dividends for preferred stock) and principal payments or receipts, while debt-linked, investment-linked, and mortgage-linked derivative contract cash flows are composed of interest payments and receipts only. Debt, nonmortgage investments, and preferred stock are categorized in one of six classes [2] as shown in Table 3–62.

TABLE 3–62—DEBT, NON-MORTGAGE INVESTMENTS, AND PREFERRED STOCK CLASSIFICATIONS

Classification	Description
Fixed-Rate Bonds or Preferred Stock	Fixed-rate securities that pay periodic interest or dividends
Floating-Rate Bonds or Preferred Stock	Floating-rate securities that pay periodic interest or dividends
Fixed-Rate Asset-Backed Securities	Fixed-rate securities collateralized by nonmortgage assets
Floating-Rate Asset-Backed Securities	Floating-rate securities collateralized by nonmortgage assets
Short-Term Instruments	Fixed-rate, short-term securities that are not issued at a discount and which pay principal and interest only at maturity
Discount Instruments	Securities issued below face value that pay a contractually fixed amount at maturity

[d] Derivative contracts consist of interest rate caps, floors, and swaps. The primary difference between financial instruments and derivative contracts, in terms of calculating cash flows, is that interest payments on financial instruments are based on principal amounts that are eventually repaid to creditors, whereas interest payments on derivative contracts are based on notional amounts that never change hands. Debt- and investment-linked derivative contracts are categorized in one of seven classes [3] as shown in Table 3–63:

TABLE 3–63—DEBT- AND INVESTMENT-LINKED DERIVATIVE CONTRACT CLASSIFICATION

Classification	Description of Contract
Basis Swap	Floating-rate interest payments are exchanged based on different interest rate indexes
Fixed-Pay Swap	Enterprise pays a fixed interest rate and receives a floating interest rate
Floating-Pay Swap	Enterprise pays a floating interest rate and receives a fixed interest rate
Long Cap	Enterprise receives a floating interest rate when the interest rate to which it is indexed exceeds a specified level (strike rate)
Short Cap	Enterprise pays a floating interest rate when the interest rate to which it is indexed exceeds the strike rate
Long Floor	Enterprise receives a floating interest rate when the interest rate to which it is indexed falls below the strike rate
Short Floor	Enterprise pays a floating interest rate when the interest rate to which it is indexed falls below the strike rate

[2] In addition to the items listed here, there are instruments that do not fit into these categories. Additional input information and calculation methodologies may be required for these instruments.

[3] *Ibid.*

[e] Mortgage-linked swaps are similar to debt-linked swaps except that the notional amount of a mortgage-linked swap amortizes based on the performance of certain MBS pools. Mortgage-linked derivative contracts are divided into two classes [4] as shown in Table 3–64:

TABLE 3–64—MORTGAGE-LINKED DERIVATIVE CONTRACT CLASSIFICATION

Classification	Description of Contract
Fixed-Pay Amortizing Swaps	Enterprise pays a fixed interest rate and receives a floating interest rate, both of which are based on a declining notional balance
Floating-Pay Amortizing Swaps	Enterprise pays a floating interest rate and receives a fixed interest rate, both of which are based on a declining notional balance

3.8.2 Nonmortgage Instrument Inputs

[a] The Nonmortgage Instrument Cash Flows component of the Stress Test requires numerous inputs. Instrument level inputs provided by the Enterprises in the RBC Report are listed in Table 3–65. Many instrument classes require simulated Interest Rates because their interest payments adjust periodically based on rates tied to various indexes. These rates are generated as described in section 3.3, Interest Rates, of this Appendix.

TABLE 3–65—INPUT VARIABLES FOR NONMORTGAGE INSTRUMENT CASH FLOWS

Data Elements	Description
Amortization Methodology Code	Enterprise method of amortizing deferred balances (e.g., straight line)
Asset ID	CUSIP or Reference Pool Number identifying the asset underlying a derivative position
Asset Type Code	Code that identifies asset type used in the commercial information service (e.g. ABS, Fannie Mae pool, Freddie Mac pool)
Associated Instrument ID	Instrument ID of an instrument linked to another instrument
Coefficient	Indicates the extent to which the coupon is leveraged or de-leveraged
Compound Indicator	Indicates if interest is compounded
Compounding Frequency	Indicates how often interest is compounded
Counterparty Credit Rating	NRSRO's rating for the counterparty
Counterparty Credit Rating Type	An indicator identifying the counterparty's credit rating as short-term ('S') or long-term ('L')
Counterparty ID	Enterprise counterparty tracking ID
Country Code	Standard country codes in compliance with Federal Information Processing Standards Publication 10–4
Credit Agency Code	Identifies NRSRO (e.g., Moody's)
Current Asset Face Amount	Current face amount of the asset underlying a swap
Current Coupon	Current coupon or dividend rate of the instrument
Current Unamortized Discount	Current unamortized premium or unaccreted discount of the instrument
Current Unamortized Fees	Current unamortized fees associated with the instrument
Current Unamortized Hedge	Current unamortized hedging gains or losses associated with the instrument
Current Unamortized Other	Any other unamortized items originally associated with the instrument
CUSIP__ISIN	CUSIP or ISIN Number identifying the instrument
Day Count	Day count convention (e.g. 30/360)
End Date	The last index repricing date
EOP Principal Balance	End of Period face, principal or notional, amount of the instrument
Exact Representation	Indicates that an instrument is modeled according to its contractual terms
Exercise Convention	Indicates option exercise convention (e.g., American Option)
Exercise Price	Par = 1.0; Options
First Coupon Date	Date first coupon is received or paid
Index Cap	Indicates maximum index rate
Index Floor	Indicates minimum index rate
Index Reset Frequency	Indicates how often the interest rate index resets on floating-rate instruments

[4] *Ibid.*

TABLE 3–65—INPUT VARIABLES FOR NONMORTGAGE INSTRUMENT CASH FLOWS—Continued

Data Elements	Description
Index Code	Indicates the interest rate index to which floating-rate instruments are tied (e.g., LIBOR)
Index Term	Point on yield curve, expressed in months, upon which the index is based
Instrument Credit Rating	NRSRO credit rating for the instrument
Instrument Credit Rating Type	An indicator identifying the instruments credit rating as short-term ('S') or long-term ('L').
Instrument ID	An integer used internally by the Enterprise that uniquely identifies the instrument
Interest Currency Code	Indicates currency in which interest payments are paid or received
Interest Type Code	Indicates the method of interest rate payments (e.g., fixed, floating, step, discount)
Issue Date	Indicates the date that the instrument was issued
Life Cap Rate	The maximum interest rate for the instrument throughout its life
Life Floor Rate	The minimum interest rate for the instrument throughout its life
Look-Back Period	Period from the index reset date, expressed in months, that the index value is derived
Maturity Date	Date that the instrument contractually matures
Notional Indicator	Identifies whether the face amount is notional
Instrument Type Code	Indicates the type of instrument to be modeled (e.g., ABS, Cap, Swap)
Option Indicator	Indicates if instrument contains an option
Option Type	Indicates option type (e.g., Call option)
Original Asset Face Amount	Original face amount of the asset underlying a swap
Original Discount	Original discount or premium amount of the instrument
Original Face	Original face, principal or notional, amount of the instrument
Original Fees	Fees associated with the instrument at inception
Original Hedge	Hedging gain or loss to be amortized or accreted at inception
Original Other	Any other amounts originally associated with the instrument to be amortized or accreted
Parent Entity ID	Enterprise internal tracking ID for parent entity
Payment Amount	Interest payment amount associated with the instrument (reserved for complex instruments where interest payments are not modeled)
Payment Frequency	Indicates how often interest payments are made or received
Performance Date	''As of'' date on which the data is submitted
Periodic Adjustment	The maximum amount that the interest rate for the instrument can change per reset
Position Code	Indicates whether the Enterprise pays or receives interest on the instrument
Principal Currency Code	Indicates currency in which principal payments are paid or received
Principal Factor Amount	EOP Principal Balance expressed as a percentage of Original Face
Principal Payment Date	A valid date identifying the date that principal is paid
Settlement Date	A valid date identifying the date the settlement occurred
Spread	An amount added to an index to determine an instrument's interest rate
Start Date	The date, spot or forward, when some feature of a financial contract becomes effective (e.g., Call Date), or when interest payments or receipts begin to be calculated
Strike Rate	The price or rate at which an option begins to have a settlement value at expiration, or, for interest-rate caps and floors, the rate that triggers interest payments
Submitting Entity	Indicates which Enterprise is submitting information
Trade ID	Unique code identifying the trade of an instrument
Transaction Code	Indicates the transaction that an Enterprise is initiating with the instrument (e.g. buy, issue reopen)
Transaction Date	A valid date identifying the date the transaction occurred
UPB Scale Factor	Factor applied to UPB to adjust for timing differences

TABLE 3–65—INPUT VARIABLES FOR NONMORTGAGE INSTRUMENT CASH FLOWS—Continued

Data Elements	Description
Unamortized Balances Scale Factor	Factor applied to Unamortized Balances to adjust for timing differences

[b] In addition to the inputs in Table 3–65, other inputs may be required depending on the characteristics of the instrument modeled. For example, the mortgage-linked derivative contract cash flows require inputs describing the performance of the mortgage assets to which they are linked, including Single Family Default and Prepayment rates (*See* section 3.6.3.4, Single Family Default and Prepayment Rates, of this Appendix). Mortgage-linked derivative contract identification numbers (Asset IDs) are used to link the derivative contract to the required pool information that will be used to calculate the cash flows of the corresponding swap.

3.8.3 Nonmortgage Instrument Procedures

In general, non mortgage instruments are modeled according to their terms. The general methodology for calculating cash flows for principal and interest payments is described in this section and is not intended to serve as definitive text for calculating all possible present and future complex instruments. As mentioned in section 3.8.2, Nonmortgage Instrument Inputs, of this Appendix, there are some instruments that may require additional input information and calculation methodologies. Simplifying assumptions are made for some instrument terms until they can be modeled more precisely.

3.8.3.1 Apply Specific Calculation Simplifications

[a] In order to produce cash flows, accruals, or amortization of deferred balances, the following simplifications are used for all instruments to which they apply. Should the language in any other portion of section 3.8, Nonmortgage Instrument Cash Flows, of this Appendix, seem to conflict with a statement in this section, the language in section 3.8.3.1 takes precedence.

1. For day count methodology, use one of three methodologies 30/360, Actual/360, and Actual/365. All special day counts (i.e. Actual/366 B, Actual/366 S, Actual/366 E, and Actual/Actual) are treated as Actual/365.
2. Set the first index reset date to the First Coupon Date. If the Issue Date is later than the start of the Stress Test, use the Current Coupon Rate to determine the interest paid from Issue Date to First Coupon Date. When a calculation requires a rate that occurs before the start of the Stress Test, use the Current Coupon Rate. This applies to interest accrued but not paid for the start of the Stress test and to rate indexes where applying a Look Back Period requires data prior to the start of the Stress Test.
   a. If periodic caps are zero, change them to 999.99; If periodic floors are greater than 1, change them to zero.
   b. For instruments which have principal balance changes other than those caused by compounding interest, perform calculations as if the principal changes occur only on coupon dates (coupon dates on the fixed-rate leg for swaps) on or later than the first principal change date.
   c. When using a rate index for a specified term in an option exercise rule or as an index, assume that rate is appropriate for the calculation. Do not convert from bond equivalent yield to another yield form for a discount, monthly pay, quarterly pay, semi-annual pay or annual pay instrument.
3. When applying the option exercise rule:
   a. For zero coupon and discount securities, and zero coupon swaps, evaluate option exercise only on dates listed in the instrument's option exercise schedule. For all other instruments, evaluate option exercise only on coupon dates (coupon dates on the fixed-rate leg for swaps) later than the first option exercise date.
   b. Assume all call/put premiums/discounts are zero except for zero coupon instruments (including zero coupon swaps and discount notes). For these exceptions, when calculating a rate to compare with the Enterprise Cost of Funds, use the yield to maturity calculated by equating the face or notional amount plus the unamortized discount at the start of the Stress Test to the present value of the face or notional amount at maturity.
   c. Assume basis swaps and floating rate securities have no cancel, put, or call options.
   d. Haircuts are not applied to forward starting swaps.

3.8.3.2 Determine the Timing of Cash Flows

Project payment dates from the payment date immediately prior to the start of the stress test according to the Payment Frequency, First Coupon Date, and Maturity Date.

3.8.3.3 Obtain the Principal Factor Amount at Each Payment Date

[a] Where there is no amortization or prepayment of principal, the Principal Factor Amount is 1.0 for each payment date until the stated Maturity Date, when it becomes zero.

[b] For debt and debt-linked derivative contracts that amortize, either a principal or a notional amortization schedule must be provided. If amortization information is unavailable, then the Principal Factor Amount is 1.0 for each payment date until the stated Maturity Date, when it becomes zero.

[c] Monthly prepayment rates are 3.5 percent for fixed-rate and 2.0 percent for floating-rate asset-backed securities. Furthermore, asset-backed securities are modeled through a commercial information service where possible. Instruments that cannot be modeled through the commercial information service are treated in accordance with section 3.9, Alternative Modeling Treatments, of this Appendix.

[d] In the case of mortgage-linked derivative contracts, notional amounts are amortized based on the characteristics of the underlying pool in the manner described for principal balances of mortgage-backed securities held by an Enterprise in section 3.7, Mortgage-Related Securities Cash Flows, of this Appendix.

3.8.3.4 Calculate the Coupon Factor

The Coupon Factor applicable to a given period, which applies to dividends also, depends on day count conventions used to calculate the interest payments for the instrument. For example, the Coupon Factor for a bond that pays interest quarterly based on a non-compounded 30/360 convention would be 3 (representing the number of months in a quarter) times 30 days divided by 360 days, or 0.25. Table 3–66 lists the most common day count conventions.

TABLE 3–66—DAY COUNT CONVENTIONS

Convention	Coupon Factor Calculation
30/360	Number of days between two payment dates assuming 30 days per month/360
Actual/360	Number of days between two payment dates/360
Actual/365	Number of days between two payment dates/365
Actual/Actual	Number of days between two payment dates/Number of days in the year

3.8.3.5 Project Principal Cash Flows or Changes in the Notional Amount

For all financial instruments, principal outstanding for the current period is determined by multiplying the Original Face by the Principal Factor Amount for the current period. The principal payment equals the amount of principal outstanding at the end of the previous period less the principal outstanding at the end of the current period, or zero if the instrument has a notional amount.

3.8.3.6 Project Interest and Dividend Cash Flows

3.8.3.6.1 Non-Complex Financial Instruments

[a] *Fixed-Rate Instruments.* The current period principal outstanding is multiplied by the product of the Current Coupon and current period Coupon Factor and rounded to even 100ths of a dollar.

[b] *Zero-Coupon Bonds.* Interest payments equal zero.

[c] *Discount Notes.* Interest payments equal zero.

[d] *Floating-Rate Instruments.* Interest payments are calculated as principal outstanding multiplied by the coupon for the current period. The current period coupon is calculated by adding a spread to the appropriate interest rate index and multiplying by the Coupon Factor. The coupon for the current period is set to this amount as long as the rate lies between the periodic and lifetime maximum and minimum rates. Otherwise the coupon is set to the maximum or minimum rate.

[e] *Interest Rate Caps and Floors.* These derivative instruments pay or receive interest only if the underlying index is above a Strike Rate (for caps) or below it (for floors). Interest payments are based on notional amounts instead of principal amounts.

1. The interest payment on a long cap is the Original Face multiplied by the amount, if any, by which the index exceeds the Strike Rate, as defined by the equation in Table 3–67. The interest payment on a long floor is the Original Face multiplied by the amount, if any, by which the index is below the Strike Rate. Otherwise interest payments are zero for caps and floors. Interest payments are either paid or received depending on whether the Enterprise is in a long or short position in a cap or a floor.
2. Monthly cash flows for long caps and floors are calculated as illustrated in Table 3–67:

TABLE 3–67—CALCULATION OF MONTHLY CASH FLOWS FOR CAPS

Instrument	Interest Receipts	Interest Payments
Long Cap	$(I - K) \times N \times D$ if $I > K$; 0 if $I \leq K$	0
Long Floor	0	$(K - I) \times N \times D$ if $I < K$; 0 if $I \geq K$

Where:

N = Original Face
K = Strike Rate
I = interest rate index
D = Coupon Factor

[f] *Swaps.* A derivative contract in which counterparties exchange periodic interest payments. Each swap leg (pay side or receive side) is modeled as a separate instrument, with interest payments based on the same notional amount but different interest rates.

1. For debt- and investment-linked swaps, each leg's interest payment is determined in the same manner as payments for fixed-rate, floating-rate or zero coupon instruments as described in paragraph [a], [b] and [d] of this section.
2. For mortgage-linked swaps, calculate the reduction in the notional amount due to scheduled monthly principal payments (taking into account both lifetime and reset period caps and floors), Prepayments, and Defaults of the reference MBS or index pool. Reduce the notional amount of the swap for the previous period by this amount to determine the notional amount for the current period. Calculate interest payments or receipts for a given period as the product of the notional amount of the swap in that period, the coupon, and the Coupon Factor applicable for that period.

3.8.3.6.2 Complex Financial Instruments

[a] Some instruments have more complex or non-standard features than those described in section 3.8.3.6.1, Non-Complex Financial Instruments, of this Appendix. These complexities can include more sophisticated variants of characteristics such as principal or notional amortization schedules, interest accrual methodologies, coupon reset formulas, and option features. In these instances, additional information may be required to completely specify the contractual cash flows or a proxy treatment for these instruments.

[b] An example of an instrument with complex features is an indexed amortizing swap. This instrument is non-standard because its notional amount declines in a way that is related to the level of interest rates. Its amortization table contains a notional amount reduction factor for a given range of interest rates. To compute cash flows for this instrument, reduce the notional amount on each payment date as specified in the amortization table. (The notional amount at the beginning of the Stress Period is given as an input to the calculation.)

[c] Special treatment is also required for foreign-currency-linked notes, the redemption value of which is tied to a specific foreign exchange rate. These require special treatment because the Stress Test does not forecast foreign currency rates. If these instruments are currency-hedged, then the note plus the hedge comprise a synthetic debt instrument for which only the pay side of the swap is modeled. If these instruments are not currency-hedged, the following treatment applies:

1. In the up-rate scenario, the U.S. dollar per unit of foreign currency ratio is increased in proportion to the increase in the ten-year CMT; therefore, the amount of an interest or principal payment is increased accordingly. For example, if the ten-year CMT shifts up by 50 percent, then the U.S. dollar per unit of foreign currency ratio shifts up by 50 percent. In the Stress Test, the payment would be multiplied by 1.5.
2. In the down-rate scenario, the foreign currency per U.S. dollar ratio is decreased in proportion to the decrease in the ten-year CMT.

[d] If a financial instrument's inputs are described in section 3.1, Data, of this Appendix, then model the instrument according to its terms; however, the Director reserves the authority to determine a more appropriate treatment if modeling the instrument according to its terms does not capture the instrument's impact on Enterprise risk. If the financial instrument's inputs are not described in section 3.1, then treat it as described in section 3.9, Alternative Modeling Treatments, of this Appendix.

3.8.3.7 Apply Call, Put, or Cancellation Features, if Applicable

[a] In some cases, principal and interest cash flows may be altered due to options imbedded in individual financial instruments. Securities can be called or put and contracts can be cancelled at the option of the Enterprise or the counterparty. The Option Type, Exercise Convention Type, and the Start Date determine when an option may be exercised. There are three standard Exercise Convention Types, all of which are accommodated in the Stress Test:

- American—Exercise can occur at any time after the Start Date of the option.
- European—Exercise can occur only on the Start Date of the option.
- Bermudan—Exercise can occur only on specified dates, usually on coupon payment dates between the Start Date of the option and maturity.

[b] The options are treated in the following manner for each date on which the option can be exercised:

1. Project cash flows for the instrument with the imbedded option assuming that the option is not exercised. If the instrument is tied to an index, assume that the index remains constant at its value on that date.
2. Determine the discount rate that equates the outstanding balance of the security plus option premium and accrued interest to the sum of the discounted values of the projected cash flows. This discount rate is called the yield-to-maturity.
3. Convert the yield-to-maturity to a bond-equivalent yield and compare the bond-equivalent yield with the projected Enterprise Cost of Funds for debt with an equivalent maturity. Interpolate linearly if the maturity is not equal to one of the maturities specified in section 3.3, Interest Rates, of this Appendix.
4. If the equivalent-maturity Enterprise Cost of Funds is lower (higher) than 50 basis points below (above) the bond-equivalent yield of the callable (putable) instrument, then the option is exercised. Otherwise, the option is not exercised, and it is evaluated at the next period when the option can be exercised.

[c] Some swap derivative contracts have cancellation features that allow either counterparty to terminate the contracts on certain dates. The cancellation feature is evaluated by comparing the fixed-rate leg of the swap to the Enterprise Cost of Funds. If either leg of the swap is cancelled, then the other leg is cancelled concurrently. Cancellable swaps are treated in the following manner:

1. For each period when an option can be exercised, compare the swap's fixed-leg coupon rate to the Enterprise Cost of Funds with a maturity equivalent to the maturity date of the swap.
2. If the option is a Call, it is deemed to be exercisable at the discretion of the Enterprise. If the option is a Put, it is deemed to be exercisable at the discretion of the Counterparty. If the option is a PutCall, it is deemed to be exercisable at the discretion of either party to the swap. Exercise the option when the swap is out of the money for the party who holds the option. A swap is considered out of the money when the rate on its fixed leg is at least 50 basis point higher or lower, depending upon whether the fixed rate is paid or received, than the like-maturity Enterprise Cost of Funds. For zero coupon swaps in all option exercise periods, use the yield to maturity calculated by equating the notional amount plus the unamortized discount at the start of the Stress Test to the present value of the notional amount at maturity.
   a. For example, if the Enterprise holds a call option for a fixed-pay swap and the coupon rate on the fixed-pay leg is at least 50 basis points above the Enterprise cost of funds for a maturity equivalent to that of the swap, then cancel the swap. Otherwise, the swap is not cancelled and it is evaluated the next time that the swap can be cancelled.

3.8.3.8 Calculate Monthly Interest Accruals for the Life of the Instrument

[a] Monthly interest accruals are calculated by prorating the interest cash flows on an actual-day basis. In this section, the term ''from'' means from and including, ''to'' means up to and not including, and ''through'' means up to and including. As an example, from the first to the third of a month is two days from the first through the third is three days. This convention is used to facilitate the day count and does not imply on which day's payments or accruals are actually made. Use one of the three following methodologies with the exception that interest cash flow dates occurring on or after the 30th of a month are considered as occurring on the last day of the month:

1. If the final interest cash flow occurs within the month, the interest accrual for that month is calculated by multiplying the final interest cash flow amount (as calculated in section 3.8.3.6 of this Appendix) times the number of days from the beginning of the month through the final maturity date divided by the number of days from the previous interest cash flow date to the maturity date.
2. If an interest cash flow other than the final interest cash flow occurs within a month, the interest accrual for that month is determined by multiplying the interest cash flow amount for the current month times the number of days from the beginning of the month through the interest cash flow date, divided by the number of days from the previous interest cash flow date (or issue date) to this interest cash flow date. To this add the interest cash flow amount for the next interest cash flow date times the number of days from the current month's interest cash flow date to the end of the month, divided by the number of days from the current month's interest cash flow date to the following next interest cash flow date.
3. If no interest cash flows occur during a month other than the issue month, the monthly interest accrual is calculated by multiplying the next interest cash flow amount times the number of days in the month divided by the number of days from the previous interest cash flow date to the next interest cash flow date.
4. If the issue month occurs after the start of the Stress Test, the monthly interest accrual is calculated by multiplying the next interest cash flow amount by the number of days in the month minus the day of issue, divided by the number of days from the issue date to the next interest cash flow date.

3.8.3.9 Calculate Monthly Amortization (Accretion) of Premiums (Discounts) and Fees

[a] Adjust monthly interest accruals (*see* section 3.10.3.6.1[a]3., of this Appendix) to reflect the value over time of discounts, premiums, fees and hedging gains and losses incurred (Deferred Balances). Amortize Deferred Balances that exist at the beginning of the Stress Test until the instrument's Maturity Date. If there are any put, call, or cancel options that are executed, amortize any remaining Deferred Balances in the execution month.

TABLE 3–68—INPUTS FOR NONMORTGAGE INSTRUMENT ACCOUNTING FLOWS

Variable	Description	Source
MD	Maturity Date	Table 3–65, Input Variables for Nonmortgage Instrument Cash Flows
UDB_0	The sum of Current Unamortized Discount, Current Unamortized Hedge, and Current Unamortized Other (Deferred Balances) for the instrument at the start of the Stress Test	Table 3–65, Input Variables for Nonmortgage Instrument Cash Flows
$MACRU_m$	Monthly Interest Accruals	section 3.8.3.8, Calculate Monthly Interest Accruals for the Life of the Instrument
$EOMPBAO_m$	Principal Balance at the end of the month for months m = 0...RM after modeling all options execution	section 3.8.3.6, Project Interest and Dividend Cash Flows
$EOMPB_m$	Principal Balance at the end of the month for months m = 0...RM before modeling any options execution	section 3.8.3.6, Project Interest and Dividend Cash Flows

1. Compute Remaining Term (RM) as follows:

$$RM = 12 \times \left(\text{year}\ (MD) - \text{year}\ (STDT)\right) + \text{month}\ (MD) - \text{month}\ (STDT) + 1$$

Where:

STDT is the Starting Date of the Stress Test

2. For nonmortgage instruments with notional principal, calculate the monthly Amortization Amount (AA_m) for each month m = 1...RM:

$$AA_m = -\frac{UDB_0}{RM} \text{ if } EOMPBAO_m > 0$$

$$AA_m = -\ UDB_{m-1} \text{ if } EOMPBAO_m = 0$$

$$UDB_m = UDB_{m-1} + AA_m$$

3. For nonmortgage instruments with principal and interest payments,
   a. Compute Allocated Interest for all months m (AI_m) as follows:

$$AI_m = \left[\frac{EOMPB_{m-1}}{\sum_{k=0}^{RM} EOMPB_k}\right] \times \sum_{k=1}^{RM} MACRU_k$$

   b. Calculate the monthly Internal Rate of Return (IRR) that equates the adjusted cash flows (actual principal plus allocated interest) to the Initial Book Value (BV_0) of the instrument. Solve for IRR such that:

$$BV_0 = \sum_{m=1}^{RM} \frac{ACF_m}{(1+IRR)^m}$$

Where:

$BV_0 = EOMPB_0 + UPD_0$

$ACF_m = EOMPB_{m-1} - EOMPB_m + AI_m$

c. Calculate the monthly Amortization Amount (AA_m) for each month m = 1...RM:

$$AA_m = (BV_{m-1} \times IRR) - AI_m \text{ if } EOMPBAO_m > 0$$

$$AA_m = -UDB_{m-1} \text{ if } EOMPBAO_m = 0$$

$$UDB_m = UDB_{m-1} + AA_m$$

$$BV_m = EOMPBAO_m + UDB_m$$

4. For discount notes,

a. Calculate Remaining Maturity in Actual Days (RMD):

$$RMD = MD - STDT + 1$$

b. Calculate the month Amortization Amount (AA_m) for each month m = 1...RM:

$$AA_m = -UDB_0 \times \frac{ADAYS_m}{RDM} \text{ if } EOMPBAO_m > 0$$

$$AA_m = -UDB_{m-1} \text{ if } EOMPBAO_m = 0$$

$$UDB_m = UDB_{m-1} + AA_m$$

Where:

$ADAYS_m$ = actual number of days in month m (days from the first of the month through maturity in month RM)

5. For zero coupon bonds,

a. Calculate Remaining Maturity in Actual Days (RMD):

$$RMD = MD - STDT + 1$$

b. Calculate Yield Factor (YF):

$$YF = \left(\frac{EOMPB_0}{EOMPB_0 + UDB_0} \right)^{\frac{1}{RMD}}$$

c. Calculate the monthly Amortization Factor (AF_m) for each month m = 1...RM:

$$AF_m = 1 \text{ if } m = 0$$

$$AF_m = AF_{m-1} \times YF^{ADAYS_m}$$

Where:

$ADAYS_m$ = actual number of days in month m (days from the first of the month through maturity in month RM):

d. Calculate the monthly Amortization Amount (AA_m) for each month m = 1...RM

$$AA_m = (EOMPB_0 + UDB_0) \times (AF_m - AF_{m-1}) \text{ if } EOMPBAO_m > 0$$

$$AA_m = -UDB_{m-1} \text{ if } EOMPBAO_m = 0$$

$$UDB_m = UDB_{m-1} + AA_m$$

3.8.3.10 Apply Counterparty Haircuts

[a] Finally, the interest and principal cash flows received by the Enterprises for non-mortgage instruments other than swaps and foreign currency-related instruments are Haircut (i.e., reduced) by a percentage to account for the risk of counterparty insolvency. The amount of the Haircut is calculated based on the public rating of the counterparty and time during the stress period in which the cash flow occurs, as specified in section 3.5, Counterparty Defaults, of this Appendix.

[b] An Enterprise may issue debt denominated in, or indexed to, foreign currencies, and eliminate the resulting foreign currency exposure by entering into currency swap agreements. The combination of the debt and the swap creates synthetic debt with principal and interest payments denominated in U.S. dollars. Because the Stress Test does not forecast foreign exchange rates, the counterparty (foreign-denominated) payments are not computed explicitly, and therefore cannot be Haircut explicitly in the calculation. No Haircut percentage is applied to the Enterprise's payments.

[c] Haircuts for swaps that are not foreign currency related are applied to the Monthly Interest Accruals (as calculated in section 3.8.3.8, of this Appendix) on the receive leg minus the Monthly Interest Accruals on the pay leg when this difference is positive.

3.8.4 Nonmortgage Instrument Outputs

[a] Outputs consist of cash flows and accounting information for debt, nonmortgage investments, preferred stock, and derivative contracts. Cash flows and accounting information outputs are inputs to section 3.10, Operations, Taxes, and Accounting, of this Appendix.

[b] Cash flows include the following monthly amounts:

1. Interest and principal payments for debt and nonmortgage investments,
2. Dividends and redemptions for preferred stock, and
3. Interest payments for debt-linked, investment-linked, and mortgage-linked derivative contracts.

[c] Accounting information includes the following monthly amounts:

1. Accrued interest and
2. Amortization of discounts, premiums, fees and other deferred items.

3.9 Alternative Modeling Treatments

3.9.1 Alternative Modeling Treatments Overview

[a] This section provides treatment for items that cannot be modeled in one of the ways specified in paragraph [b] of this section, but must be included in order to run the Stress Test. Because the rule provides treatments for a wide variety of instruments and activities that can be applied to accommodate unusual instruments, OFHEO expects few items to fall into this category.

[b] An Alternative Modeling Treatment (AMT) applies to any on- or off-balance-sheet item that is missing data elements required to calculate appropriate cash flows, or any instrument with unusual features for which this Appendix does *not*:

1. Provide an explicit computational procedure and set of inputs (i.e., the Appendix specifies exact data inputs and procedures for a class of instruments to which the item belongs); or,
2. Provide an implicit procedure (used for a general class of instruments), and explicit inputs that allow the item to be fully characterized for computational purposes (i.e., the Appendix specifies procedures and data inputs for a class of instruments to which the item does not belong that can be applied to the item to accurately compute its cash flows); or
3. Provide an implicit procedure by exact substitution, i.e., by representing the item as a computationally equivalent combination of other items that are specified in paragraphs (1) or (2) in this section (i.e., the Appendix specifies treatments for two or more instruments, which, in combination, exactly produce the item's cash flows); or
4. Permit the approximation of one or more computational characteristics by other similar values that are explicitly specified in this Appendix, or in the RBC Report instructions (i.e., the Appendix specifies a treatment, or combination of treatments, that can be used as a reasonable proxy for the computational characteristics of the item). Such proxy treatments must be approved by OFHEO. OFHEO may, in its discretion, approve a proposed proxy treatment, adopt a different proxy treatment, or treat items for which a proxy treatment has been proposed by the Enterprises according to the remaining provisions of section 3.9, Alternative Modeling Treatments, of this Appendix.

[c] For a given on- or off-balance sheet item, the appropriate AMT is determined according to the categories specified in section 3.9.3, Alternative Modeling Treatments Procedures, of this Appendix, based on the information available for that item. The output for each such item is a set of cash and accounting flows, or specific amounts to be applied in section 3.12, Calculation of the Risk-Based Capital Requirement, of this Appendix.

3.9.2 Alternative Modeling Treatments Inputs

Table 3–69 identifies the minimal inputs that are used to determine an AMT. (*See also* section 3.1, Data, of this Appendix)

TABLE 3–69—ALTERNATIVE MODELING TREATMENT INPUTS

Variable	Description
TYPE	Type of item (asset, liability or off-balance sheet item)
BOOK	Book Value of item (amount outstanding adjusted for deferred items)
FACE	Face Value or notional balance of item for off-balance sheet items
REMATUR	Remaining Contractual Maturity of item in whole months. Any fraction of a month equals one whole month.
RATE	Interest Rate
INDEX	Index used to calculate Interest Rate
FAS115	Designation that the item is recorded at fair value, according to FAS 115
RATING	Instrument or counterparty rating
FHA	In the case of off-balance sheet guarantees, a designation indicating 100% of collateral is guaranteed by FHA
UABAL	Unamortized Balance (Book minus Face)
MARGIN	Margin over an Index

3.9.3 Alternative Modeling Treatments Procedures

For each item, one of the following alternatives will be applied:

3.9.3.1 Off-Balance Sheet Items

[a] If the item is a guarantee of a tax-exempt multifamily housing bond, or a single family or multifamily whole-loan REMIC class rated triple-A, or other similar transaction guaranteed by the Enterprises, multiply the face value of the guaranteed instruments by 0.45 percent. This amount is added to the amount of capital required to maintain positive total capital throughout the ten-year Stress Period. Any instruments or obligations with 100 percent of collateral guaranteed by the Federal Housing Administration (FHA) are excluded from this calculation.

[b] Otherwise, add to the amount of capital required to maintain positive total capital throughout the ten-year Stress Period an amount equal to the face or notional value of the item at the beginning of the Stress Period times three percent.

3.9.3.2 Reconciling Items

Reconciling items falling into this category will be treated according to the specifications in section 3.10, Operations, Taxes, and Accounting, of this Appendix.

3.9.3.3 Balance Sheet Items

[a] If the item is a trading security recorded at fair value according to FAS 115, then the book value (the face value adjusted for deferred balances) will be converted to cash in the first month of the Stress Test.

[b] Otherwise, if the item is an earning asset, then it is treated as a held-to-maturity asset, based on book value, as follows:

1. In the up-rate scenario, it will be treated as a held-to-maturity bond paying compound interest on a 30/360 basis at maturity, with the item's contractual maturity and rate. The item will be Haircut according to its rating. If no maturity is provided, maturity will be set at 120 months. If no rate is provided, a rate will be assigned at the Initial Enterprise Cost of Funds whose term is equal to the remaining maturity, less 200 basis points (but not less than zero). If no rating is provided, the asset will be classified as unrated.
2. In the down-rate scenario, it will be treated as a held-to-maturity bond paying compound interest on a 30/360 basis at maturity, with the item's contractual maturity and rate. The item will be Haircut according to its rating. If no maturity is provided, maturity will be set at 120 months. If no rate is provided, a rate will be assigned at the floating one-month Enterprise Cost of Funds less 200 basis points (but not less than zero). If no rating is provided, the asset will be classified as unrated.

[c] If the item is a non-earning asset it will remain on the books and earn no interest throughout the Stress Period.

[d] Otherwise, if the item is a liability, then it is treated as follows, based on book value:

1. In the up-rate scenario, it will be treated as non-callable and monthly coupon-paying to maturity on a 30/360 basis. If the coupon rate is not specified, the liability will be given a floating rate at the one-month Enterprise Cost of Funds plus 200 basis points. If no maturity is provided, maturity will be set at 120 months.
2. In the down-rate scenario, it will be treated as non-callable and monthly coupon paying to maturity. If no coupon is provided, the liability will be given a fixed rate at the Initial Enterprise Cost of Funds plus 200 basis points. If no maturity is provided, maturity will be set at ten years.

[e] Unamortized Balances should be amortized on a straight-line basis over the designated remaining maturity of the instrument.

[f] All items in this section are treated as if they had no options or cancellation features. The face value will be held constant until maturity. If an item has an adjustable rate, it is assumed that the interest rate will adjust monthly with no caps and a lifetime floor of zero percent.

3.9.4 Alternative Modeling Treatments Outputs

For each AMT item, the output is a set of cash and accounting flows appropriate to its respective treatment as specified in section 3.9.3, Alternative Modeling Treatments Procedures, or specific amounts to be applied in section 3.12, Calculation of the Risk-Based Capital Requirement, of this Appendix.

3.10 Operations, Taxes, and Accounting

3.10.1 Operations, Taxes, and Accounting Overview

This section describes the procedures for determining new debt issuance and investments, computing capital distributions, calculating operating expenses and taxes, and creating pro forma balance sheets and income statements. Input data include an Enterprise's balance sheet at the beginning of the Stress Period, interest rates from the Interest Rates component of the Stress Test, and the outputs from cash flow components of the Stress Test. The outputs of the procedures discussed in this section—monthly pro forma balance sheets, cash flow and income statements for each month of the Stress Test—are the basis for the capital calculation described in section 3.12, Calculation of the Risk-Based Capital Requirement, of this Appendix.

3.10.2 Operations, Taxes, and Accounting Inputs

[a] Data described in section 3.1, Data, section 3.3.4, Interest Rates Outputs, section 3.6.4, Final Whole Loan Cash Flow Outputs, section 3.7.4, Mortgage-Related Securities Outputs, and section 3.8.4, Nonmortgage Instrument Outputs, of this Appendix, is used to produce monthly pro forma balance sheets and income statements for the Enterprises. In addition to the starting position data, described in the cash flow components, the Enterprises provide the starting position dollar values for the items in Table 3–70.

TABLE 3–70—OPERATIONS, TAXES, AND ACCOUNTING INPUTS

Input	Description
FAS 115 and 125 fair value adjustment on retained mortgage portfolio	
FAS 133 fair value adjustment on retained mortgage portfolio	
Reserve for losses on retained mortgage portfolio	
FAS 115 and 125 fair value adjustments on non-mortgage investments	
FAS 133 fair value adjustments on non-mortgage investments	
Total cash	
Accrued interest receivable on mortgages	
Accrued interest receivable on non-mortgage investment securities	
Accrued interest receivable on non-mortgage investment securities denominated in foreign currency—hedged	
Accrued interest receivable on non-mortgage investment securities denominated in foreign currency—unhedged	
Accrued interest receivable on mortgage-linked derivatives, gross	
Accrued interest receivable on investment-linked derivatives, gross	
Accrued interest receivable on debt-linked derivatives, gross	
Other accrued interest receivable	
Accrued interest receivable on hedged debt-linked foreign currency swaps	Underlying instrument is GSE issued debt
Accrued interest receivable on unhedged debt-linked foreign currency swaps	
Accrued interest receivable on hedged asset-linked foreign currency swaps	Underlying instrument is an asset
Accrued interest receivable on unhedged asset-linked foreign currency swaps	
Currency transaction adjustments—hedged assets	Cumulative gain or loss due to changes in foreign exchange rates relative to on-balance sheet assets originally denominated in foreign currency
Currency transaction adjustments—unhedged assets	Cumulative gain or loss due to changes in foreign exchange rates relative to unhedged assets and off-balance sheet items originally denominated in foreign currency
Federal income tax refundable	
Accounts receivable	
Fees receivable	
Low income housing tax credit investments	
Fixed assets, net	
Clearing accounts	Net book value of all clearing accounts
Other assets	
Foreclosed property, net	Real estate owned including property acquired through foreclosure proceedings
FAS 133 fair value adjustment on debt securities	
Accrued interest payable on existing fixed-rate debt securities	
Accrued interest payable on existing floating-rate debt securities	
Accrued interest payable on existing debt issued in foreign currency—hedged	
Accrued interest payable on existing debt issued in foreign currency—unhedged	
Accrued interest payable on mortgage-linked derivatives, gross	
Accrued interest payable on investment-linked derivatives, gross	
Accrued interest payable on debt-linked derivatives, gross	
Other accrued interest payable	
Accrued interest payable debt-linked foreign currency swaps—hedged	
Accrued interest payable debt-linked foreign currency swaps—unhedged	

TABLE 3–70—OPERATIONS, TAXES, AND ACCOUNTING INPUTS—Continued

Input	Description
Accrued interest payable asset-linked foreign currency swaps—hedged	
Accrued interest payable asset-linked foreign currency swaps—unhedged	
Principal and interest due to mortgage security investors	Cash received on sold mortgages for onward submission to mortgage security investors
Currency transaction adjustments—hedged debt	Cumulative gain or loss due to changes in foreign exchange rates relative to on-balance sheet debt originally denominated in foreign currency
Currency transaction adjustments—unhedged debt	Cumulative gain or loss due to changes in foreign exchange rates relative to unhedged liabilities and off-balance sheet items originally denominated in foreign currency
Escrow deposits	Cash balances held in relation to servicing of multifamily loans
Federal income taxes payable	
Preferred dividends payable	
Accounts payable	
Other liabilities	
Common dividends payable	
Reserve for losses on sold mortgages	
Common stock	
Preferred stock, non-cumulative	
Additional paid-in capital	
Retained earnings	
Treasury stock	
Unrealized gains and losses on available-for-sale securities, net of tax, in accordance with FAS 115 and 125	
Unrealized gains and losses due to mark to market adjustments, FAS 115 and 125	
Unrealized gains and losses due to deferred balances related to pre-FAS 115 and 125 adjustments	
Unrealized gains and losses due to other realized gains, FAS 115	
Other comprehensive income, net of tax, in accordance with FAS 133	
OCI due to mark to market adjustments, FAS 133	
OCI due to deferred balances related to pre-FAS 133 adjustments	
OCI due to other realized gains, FAS 133	
Operating expenses	Average of prior three months
Common dividend payout ratio (average of prior 4 quarters)	Sum dollar amount of common dividends paid over prior 4 quarters and divided by the sum of total of after tax income less preferred dividends paid over prior 4 quarters
Common dividends per share paid 1 quarter prior to the beginning of the stress period	
Common shares outstanding	
Common Share Market Price	
Dividends paid on common stock 1 quarter prior to the beginning of the stress period	
Share Repurchases (average of prior 4 quarters)	Sum dollar amount of repurchased shares, net of newly issued shares, over prior 4 quarters and divided by 4
Off-balance-sheet Guarantees	Guaranteed instruments not reported on the balance sheet, such as whole loan REMICs and multifamily credit enhancements, and not 100% guaranteed by the FHA
Other Off-Balance Sheet Guarantees	All other off-balance sheet guaranteed instruments not included in another category, and not 100% guaranteed by the FHA

TABLE 3–70—OPERATIONS, TAXES, AND ACCOUNTING INPUTS—Continued

Input	Description
YTD provision for income taxes	Provision for income taxes for the period beginning January 1 and ending as of the report date
Tax loss carryforward	Net losses available to write off against future years' net income
Tax liability for the year prior to the beginning of the Stress Test	
Tax liability for the year 2 years prior to the beginning of the Stress Test (net of carrybacks)	
Taxable income for the year prior to the beginning of the Stress Test	
Taxable income for the year 2 years prior to the beginning of the Stress Test (net of carrybacks)	
Net after tax income for the quarter preceding the start of the stress test	
YTD taxable income	Total amount of taxable income for the period beginning January 1 and ending as of the report date
Minimum capital requirement at the beginning of the Stress Period	
Specific allowance for loan losses	Loss allowances calculated in accordance with FAS 114
Zero coupon swap receivable	
Unamortized discount on zero coupon receivable	

[b] Amounts required to reconcile starting position balances from cash flow components of the Stress Test with an Enterprise's balance sheet will be reported in the RBC Report with the related instrument. The corresponding balance for the related instrument will be adjusted accordingly.

3.10.3 Operations, Taxes, and Accounting Procedures

The Stress Test calculates new debt and investments, dividends, allowances for loan losses, operating expenses, and income taxes. These calculations are determined by, and also affect, the pro forma balance sheets and income statements during the Stress Period.

3.10.3.1 New Debt and Investments

[a] For each month of the Stress Test, cash deficits and surpluses are eliminated by issuing new debt or purchasing new investments. The Stress Test calculates cash received and cash disbursed each month in order to determine the net availability of cash. Depending on the calculated net cash position at month end, new short term investments are purchased at mid-month or a mix of long and short term debt is issued at mid-month so that the recalculated net cash position at month end is zero.

[b] For each month of the Stress Test, the following calculations are performed to determine the amount and type of new debt and investments. The short-term investments and appropriate mix of long-term and short-term debt are reflected in the pro forma balance sheets. Interest income or interest expense for the new investments or debt are reflected in the pro forma income statements.

1. In any month in which the cash position is positive at the end of the month, the Stress Test invests the Enterprise's excess cash on the 15th day of that month in one-month Treasury bills that yield the six-month Treasury rate for that month as specified in section 3.3, Interest Rates, of this Appendix.
2. In any month in which the cash position is negative at the end of the month, the Stress Test issues a mix of new short-term and long-term debt on the 15th day of that month. New short-term debt issued is six-month discount notes with a discount rate at the six-month Enterprise Cost of Funds as specified in section 3.3, Interest Rates, of this Appendix, with interest accruing on a 30/360 basis. New long-term debt issued is five-year bonds not callable for the first year (''five-year-no call-one'') with an American call at par after the end of the first year, semiannual coupons on a 30/360 basis with principal paid at maturity or call, and a coupon rate set at the five year Enterprise Cost of Funds as specified in section 3.3, Interest Rates, of this Appendix, plus a 50 basis point premium for the call option. An issuance cost of 2.5 basis points is assessed on new short-term debt at issue and an issuance cost of 20 basis points is assessed on new long-term debt at issue. New short-term debt is issued in a manner so that the existing short-term debt plus the newly issued short-term debt does not exceed fifty percent of the sum of all existing debt and total new debt issued. Issuance fees for new debt are amortized on a straight line basis to the maturity of the appropriate instrument.
3. Given the Net Cash Deficit (NCD_m) in month m, use the following method to calculate the amount of short-term and long-term debt to issue in month m:
   a. Calculate Discount Rate Factor (DRF_m):

$$DRF_m = \left(1 + \frac{CF_m}{12}\right)^6$$

Where:

CF_m = six month Enterprise Cost of Funds for month m

   b. Calculate the Adjustment Factor for Short-Term Debt Issuance Fees ($AFSIF_m$):

$$AFSIF_m = 1 - 0.00025 \times DRF_m$$

   c. Calculate the Maximum Short-Term Issuance ($MSTI_m$):

$$MSTI_m = DRF_m \times \frac{NCD_m}{AFSIF_m}$$

   d. Calculate New Short-Term Debt Outstanding ($NSDO_m$):

$$NSDO_m = SDO_m - PS_m + RS_m$$

Where:

SDO_m = remaining principal balance of all debt maturing or repricing within the next twelve months;

PS_m = remaining notional balances of the receive side of swaps maturing or repricing within the next twelve months;

RS_m = remaining notional balances of the pay side of swaps maturing or repricing within the next twelve months.

   e. Calculate Face Amount of Short-Term Debt to be issued this month ($FASD_m$):

$$FASD_m = min\left(MSTI_m,\ max\left(0,\ DRF_m \times \frac{(0.998 \times TDO_m - 1.996 \times NSDO_m + NCD_m)}{(0.998 \times DRF_m) + AFSIF_m}\right)\right)$$

Where:

TDO_m = remaining principal balance of all debt outstanding at the end of this month

f. Calculate Face Amount of Long-Term Debt to be issued ($FALD_m$):

$$FALD_m = \frac{1}{0.998} \times max\left(0,\ NCD_m - \frac{FASD_m \times AFSIF_m}{DRF_m}\right)$$

3.10.3.2 Dividends and Share Repurchases

[a] The Stress Test determines quarterly whether to pay dividends and make share repurchases. Dividends are decided upon and paid during the first month after the end of the quarter for which they are declared. If any dividends are paid, the dividend payout cannot exceed an amount equal to core capital less the estimated minimum capital requirement at the end of the quarter. Share repurchases are made during the middle month of the quarter.

1. *Preferred Stock.* An Enterprise will pay dividends on preferred stock as long as that Enterprise meets the estimated minimum capital requirement before and after the payment of these dividends. Preferred stock dividends are based on the coupon rates of the issues outstanding. The coupon rates for any issues of variable rate preferred stock are calculated using projections of the appropriate index rate. Preferred stock dividends may not exceed core capital less the estimated minimum capital requirement at the end of the preceding quarter.
2. *Common Stock.* In the first year of the Stress Test, dividends are paid on common stock in each of the four quarters after preferred dividends, if any, are paid unless the Enterprise's capital is, or after the payment, would be, below the estimated minimum capital requirement.
   a. *First Quarter.* In the first quarter, the dividend is the dividend per share ratio for common stock from the quarter preceding the Stress Test (adjusted by the ratio of Enterprise retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost) times the current number of shares of common stock outstanding.
   b. *Subsequent Quarters.*
   1) In the three subsequent quarters, if the preceding quarter's after tax income is greater than after tax income in the quarter preceding the Stress Test, pay the larger of (1) the dividend per share ratio for common stock from the quarter preceding the Stress Test (adjusted by the ratio of Enterprise retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost) times the current number of shares of common stock outstanding or (2) the average dividend payout ratio for common stock for the four quarters preceding the start of the Stress Test times the preceding quarter's after tax income (adjusted by the ratio of Enterprise retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost) less preferred dividends paid in the current quarter. In no case may the dividend payment exceed an amount equal to core capital less the estimated minimum capital requirement at the end of the preceding quarter.
   2) If the previous quarter's after tax income is less than or equal to after tax income in the quarter preceding the Stress Test (adjusted by the ratio of Enterprise retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost), pay the lesser of (1) the dividend per share ratio for common stock for the quarter preceding the Stress Test times the current number of shares of common stock outstanding or (2) an amount equal to core capital less the estimated minimum capital requirement at the end of the preceding quarter, but not less than zero.
3. *Share Repurchases.* In the first two quarters of the Stress Test, the capital of the Enterprises will be reduced to reflect the repurchase of shares. The amount of the capital reduction in each of those two quarters will be equal to the average net stock repurchases by the Enterprise during the four quarters preceding the start of the Stress Period. Net stock repurchases equal repurchases less receipts from new stock issued, but not less than zero. Repurchases in each of the first two quarters may occur only up to the point that the amount of core capital exceeds the estimated minimum capital requirement at the end of the first month of the quarter.
4. *Minimum Capital Requirements.* For the purposes of the Stress Test, the Enterprise's minimum capital requirement is computed by applying leverage ratios to all assets (2.50 percent) and off-balance sheet obligations (0.45 percent), and summing the results. Repurchases of an Enterprise's own previously-issued MBSs are excluded from the minimum capital calculation used in section 3.10.3.2, Dividends and Share Repurchases, of this Appendix.

3.10.3.3 Allowances for Loan Losses and Other Charge-Offs

[a] The Stress Test calculates a tentative allowance for loan losses monthly by multiplying current-month Credit Losses (CL in Table 3–52) by twelve, thus annualizing current month Credit Losses. This is a proxy for a loss contingency where it is probable that a loss has been incurred and the amount can be reasonably estimated. For both the retained and sold portfolios, these credit losses include lost principal (net of recoveries from credit enhancements and disposition of the real estate collateral), and foreclosure, holding, and disposition costs. If the tentative allowance for loan losses for the current period is greater than the balance from the prior month less charge-offs (i.e., credit losses) for the current month, a provision (i.e., expense) is recorded. Otherwise, no provision is made and the allowance for loan losses is equal to the prior period amount less current month charge-offs.

[b] Other charge-offs result from Haircuts related to mortgage revenue bonds, private-issue MBS, and non mortgage investments, described in their respective cash flow components.

1. In the case of Enterprise investments in securities, these Haircuts result in the receipt of less principal and interest than is contractually due. Lost principal is recorded as Other Losses when due and not received, while lost interest is recorded as a reduction of Interest Income.
2. In the case of interest rate derivative instruments, these Haircuts result in the receipt of less net interest than is contractually due from, or the payment of more interest than is contractually due to, an Enterprise counterparty. For those swaps that are linked to Enterprise investments, the increase or decrease of net swap interest due is recorded as an adjustment of Interest Income. For those swaps that are linked to Enterprise debt obligations, the increase or decrease of net swap interest due is recorded as an adjustment of Interest Expense.

3.10.3.4 Operating Expenses

[a] The Stress Test calculates operating expenses, which include non-interest costs such as those related to an Enterprise's salaries and benefits, professional services, property, equipment and office space. Over the Stress Period, operating expenses are equal to the sum of two components. The first component in each month is equal to one-third (1⁄3) of the average monthly operating expenses of the Enterprise in the quarter immediately preceding the start of the Stress Test. The second component changes in proportion to the change in the

size of the Enterprise's mortgage portfolio (i.e., the sum of outstanding principal balances of its retained and sold mortgage portfolios). The Stress Test calculates the Enterprise's mortgage portfolio at the end of each month of the Stress Period as a percentage of the portfolio at the start of the Stress Test, and then multiplies the percentage of assets remaining by two-thirds (2⁄3) of the average monthly operating expenses of the Enterprise in the quarter immediately preceding the start of the Stress Test.

[b] The sum of the two components in paragraph [a], of this section, is multiplied by a factor which equals

$$\left(1-\frac{m}{36}\right)$$

for the first 12 months of the Stress Test and then equals two-thirds for months 13 and beyond. This product is the Enterprise's operating expense for a given month in the Stress Period.

3.10.3.5 Income Taxes

[a] Both Enterprises are subject to Federal income taxes, but neither is subject to state or local income taxes.

[b] The Stress Test applies an effective Federal income tax rate of 30 percent when calculating the monthly provision for income taxes (e.g., income tax expense). OFHEO may change the 30 percent income tax rate if there are significant changes in Enterprise experience or changes in the statutory income tax.

[c] The Stress Test sets income tax expense for tax purposes equal to the provision for income taxes. The effects of timing differences between taxable income and Generally Accepted Accounting Principles (GAAP) income before income taxes are ignored. Income before taxes is adjusted by the ratio of Enterprise retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost. Therefore, Net Operating Loss (NOL) occurs only when the net income, before the provision for income taxes, is negative.

[d] Payments for estimated income taxes are made quarterly, in the month after the end of the quarter. At the end of each year, the annual estimated tax amount is compared to the annual actual tax amount. In March of the next year, a payment of remaining taxes is made or a refund for overpayment of income taxes is received.

[e] The NOL for the current year is ''carried back'' to offset taxes in any or all of the preceding two calendar years. (The Enterprises' tax year is the same as the calendar year.) This offset of the prior years' taxes results in a negative provision for income taxes (e.g., income) for the current year. Use of a carry back reduces available carry backs in subsequent years. Any NOL remaining after carry backs are exhausted becomes a carry forward.

[f] Carry forwards represent NOLs that cannot be carried back to offset previous years' taxes, but can be used to offset taxes in any or all of the subsequent 20 years. Carry forwards accumulate until used, or until they expire 20 years after they are generated.

[g] A valuation adjustment is used to eliminate any deferred tax asset.

3.10.3.6 Accounting

[a] The 1992 Act specifies that total capital includes core capital and a general allowance for foreclosure losses. For the Enterprises, this general allowance is represented by general allowances for loan losses on their retained and sold mortgage portfolios. As defined at 12 CFR 1750.2, core capital includes the sum of the following components of equity:

1. The par or stated value of outstanding common stock,
2. The par or stated value of outstanding perpetual, noncumulative preferred stock,
3. Paid-in capital, and
4. Retained earnings.

[b] In order to determine the amount of total capital an Enterprise must hold to maintain positive total capital throughout the ten-year Stress Period, the Stress Test projects the four components of equity listed in paragraph [a] of this section plus general loss allowances as part of the monthly pro forma balance sheets.

[c] Details of an Enterprise's actual balance sheet at the beginning of the Stress Test are recorded from a combination of starting position balances for all instruments for which other components of the Stress Test calculate cash flows and other starting position balances for assets, liabilities, and equity accounts needed to complete an Enterprise's balance sheet.

[d] After recording an Enterprise's balance sheet at the beginning of the Stress Period, the Stress Test creates monthly pro forma balance sheets and income statements by recording output from the cash flow components of the Stress Test; recording new debt and investments (and related interest), dividends, loss allowances, operating expenses, and taxes; and applying accounting rules pertaining to pro forma balance sheets and income statements.

3.10.3.6.1 Accounting for Cash Flows and Accounting Flows

[a] Balances at the beginning of the Stress Test are obtained from the RBC Report. Subsequent changes to related pro forma balance sheet and income statement accounts are obtained from data generated by cash flow components of the Stress Test as follows:

1. *Retained Loans.* For Retained Loans, interest cash flows in the first month of the Stress Period reduce accrued interest receivable at the beginning of the Stress Test. Subsequent months interest cash flows are recorded as accrued interest receivable and interest income in the month prior to receipt. When the interest cash flows are received, accrued interest receivable is reduced. Monthly principal cash flows (including Prepayments and defaulted principal) are recorded as reductions in the outstanding balance of the loan group. Net losses on Defaults are charged off against the allowance for loan losses. Amortization of deferred discounts increases interest income; amortization of deferred premiums decreases interest income.
2. *Mortgage Revenue Bonds.* For mortgage revenue bonds, interest cash flows in the first month of the Stress Period reduce accrued interest receivable at the beginning of the Stress Test. Subsequent months' interest cash flows are recorded as accrued interest receivable and interest income in the month prior to receipt. When the interest cash flows are received, accrued interest receivable is reduced. Monthly principal cash flows (including Prepayments) are recorded in the month received as a reduction in the outstanding balance of mortgage assets. Defaulted principal is charged off when due and is not received. Amortization of deferred discounts increases interest income; amortization of deferred premiums decreases interest income.
3. *Nonmortgage Instruments.* Principal repayments of nonmortgage instruments reduce the nonmortgage instrument and increases or decreases cash. When the interest cash flows are received or paid, accrued interest receivable or payable is reduced. Accrued interest includes both amounts at the beginning of the Stress Period and subsequent monthly accruals (also recorded as interest income or interest expense). Amortization of deferred discounts and premiums increases or decreases interest income or interest expense. Defaulted principal is charged off when due and not received.
4. *Sold Portfolio.* Sold portfolio cash flows include monthly guarantee fees, float, and principal and interest due MBS investors. Guarantee fees are recorded as income in the month received. Principal and interest due mortgage security investors does not affect the balance sheet; however, interest earned on these amounts (float) is recorded as income in the month the underlying principal and interest payments are received. Principal payments received and defaulted loan balances reduce the outstanding balance of the sold portfolio. Losses (net of recoveries) are charged off against the allowance for losses on the sold portfolio (a liability on the pro forma balance sheets) and reduce cash. Amortization of deferred premiums and discounts increases or decreases guarantee fees.

3.10.3.6.2 Accounting for Non-Cash Items

[a] Changes in the pro forma balances for other parts of the Enterprise's balance sheet not resulting from cash flows are recorded as described in the following nine steps:

1. *Unrealized Gains and Losses.*
   a. Recorded amounts in Other Comprehensive Income (OCI) that correspond to investments in available-for-sale securities will be reversed against related investment balances so as to revert recorded investment balances to amortized cost at the start of the Stress Test. Deferred amounts associated with these securities are amortized as described in previous sections of this document corresponding to the particular instrument type.
   b. The recorded value of derivative instruments (less unamortized amounts that, prior to the adoption of FAS 133, would have been amortized) that were

designated as Cash Flow Hedges will be reversed against OCI at the start of the Stress Test. The carrying value of derivative instruments and related hedged items (less unamortized amounts that, prior to the adoption of FAS 133, would have been amortized) that were designated Fair Value Hedges will be reversed as an increase or decrease in Retained Earnings at the start of the Stress Test.

c. Recorded amounts in OCI that correspond to derivative transactions terminated prior to the start of the Stress Test will be amortized in a manner that is consistent with the amortization of other, deferred amounts associated with the hedged instrument.

d. Any treatments in section 3.10.3.6.2[a]1. of this Appendix, are not applied to instruments that are modeled under AMT (*see* section 3.9, Alternative Modeling Treatments, of this Appendix).

2. *Low Income Housing Tax Credit Investments.* Low income housing tax credit investments at the beginning of the Stress Test are converted to cash on a straight line basis over the first six months of the Stress Period.

3. *Other Assets.* The following other assets at the beginning of the Stress Test are converted to cash as follows:

a. Clearing accounts and other miscellaneous receivables (e.g., fees receivable, accounts receivable, and other miscellaneous assets) in the first month of the Stress Test.

b. Earning assets (*see* section 3.9, Alternative Modeling Treatments, of this Appendix)

c. Items not covered by a. and b. of this section on a straight-line basis over the first five-years of the Stress Test.

4. *Real Estate Owned (REO).* Real estate owned at the beginning of the Stress Test is converted to cash on a straight-line basis over the first six months of the Stress Test.

5. *Fixed Assets.* Fixed assets (net of accumulated depreciation) as of the beginning of the Stress Test remain constant over the Stress Test. However, depreciation is included in the base on which operating expenses are calculated for each month during the Stress Period.

6. *Principal and Interest Payable.* Principal and interest payable to an Enterprise's mortgage security investors at the beginning of the Stress Test are paid during the first two months of the Stress Test (one-half in month one and one-half in month two).

7. *Other Liabilities.* The following liabilities at the beginning of the Stress Test are paid in the first month of the Stress Test, reducing cash:

a. Escrow deposits

b. Other miscellaneous liabilities

8. *Commitments.* No gains or losses are recorded when commitments are added to the Enterprise's sold portfolio. *See* section 3.2.1, of this Appendix.

9. *Fully-Hedged Foreign Currency-Denominated Liabilities.* Amounts that relate to currency swaps and foreign currency-denominated liabilities will be treated as follows:

a. Recorded balances that correspond to converted foreign currency-denominated liabilities will be amortized in a manner that is consistent with scheduled pay leg exchanges of notional amounts as set forth in corresponding currency swaps. The unamortized premiums, discounts and/or fees that are associated with these liabilities will be amortized as described in section 3.8, of this Appendix, as if they were associated with the pay legs of the corresponding currency swap. Any differences will be reflected as an increase or decrease in Retained Earnings.

b. Interest payable amounts associated with currency swaps will be settled in a manner that is consistent with the contractual terms for these instruments.

c. Receivable amounts associated with currency swaps and interest payable amounts associated with foreign currency-denominated debt will be reversed against Retained Earnings.

d. The adjustments in a., b. and c., of this section, will take place at the start of the Stress Test. These treatments are not applied to instruments that are modeled under AMT (*see* section 3.9, Alternative Modeling Treatments, of this Appendix) or foreign currency-denominated instruments that are not fully hedged.

3.10.3.6.3 Other Accounting Principles

The following additional accounting principles apply to the pro forma balance sheets and income statements:

1. All investment securities are treated as held to maturity. As such, they are recorded as assets at amortized cost, not at fair value.
2. All non-securitized mortgage loans will be classified as ''held-to-maturity'' and will be accounted for on an amortized cost basis.
3. Effective control over the collateral for collateral financings is with the party that originally delivered such collateral.
4. Enterprise Real Estate Investment Trust (REIT) subsidiaries are consolidated. Specifically, REIT assets are treated as Enterprise assets. Preferred stock of the REIT is reflected as Enterprise debt. Dividends paid on the preferred stock are reported as interest expense.
5. Treasury stock is reflected as a reduction in retained earnings.

3.10.4 Operations, Taxes, and Accounting Outputs

For each month of the Stress Period, the Stress Test produces a pro forma balance sheet and income statement. The Operations, Taxes and Accounting component outputs 121 monthly and 11 annual balance sheets, 120 monthly and 10 annual income statements, and 120 monthly and 10 annual cash flow statements, including part-year statements for the first and last calendar years of the Stress Test when necessary. These pro forma financial statements are the inputs for calculation of the risk-based capital requirement (*see* section 3.12, Calculation of the Risk-Based Capital Requirement, of this Appendix).

3.11 Treatment of New Enterprise Activities

3.11.1 New Enterprise Activities Overview

[a] Given rapid innovation in the financial services industry, OFHEO anticipates the Enterprises will become involved with new mortgage products, investments, debt and derivative instruments, and business activities, which must be accommodated in the Stress Test in order to capture all of the risk in the Enterprises' businesses. New accounting entries resulting from these innovations and changes in accounting must also be accommodated. The regulation is sufficiently flexible and complete to address new Enterprise activities as they emerge, using the procedures outlined in this section. However, OFHEO will monitor the Enterprises' activities and, when appropriate, propose amendments to this regulation addressing the treatment of new instruments, activities, or accounting treatments.

[b] For the purpose of this section of the Appendix, the term New Activity means any type of asset, liability, off-balance-sheet item, accounting entry, or activity to which a Stress Test treatment has not previously been applied. In addition, the Director has the discretion to treat as a New Activity: (1) any activity or instrument with characteristics or unusual features that create risks or hedges for the Enterprise that are not reflected adequately in the specified treatments for similar activities or instruments; and (2) any activity or instrument for which the specified treatment no longer adequately reflects the risk/benefit to the Enterprise, either because of increased volume or because new information concerning those risks/hedges has become available.

3.11.2 New Enterprise Activities Inputs

[a] Complete data and full explanations of the operation of the New Activity sufficient to understand the risk profile of the New Activity must be provided by the Enterprise. The Enterprises are required to notify OFHEO, pursuant to § 1750.2(c), of proposals related to New Activities as soon as possible, but in any event no later than five calendar days after the date on which the transaction closes or is settled. The Enterprises are encouraged to suggest an appropriate capital treatment that will fully capture the credit and interest rate risk in the New Activity. Information on New Activities must also be submitted and appropriately identified as such in the RBC Report.

[b] The Stress Test will not give an Enterprise the capital benefit associated with a New Activity where OFHEO determines that the impact of that activity on the risk-based capital level of the Enterprise is not commensurate with the economic benefit to the Enterprise.

3.11.3 New Enterprise Activities Procedures

[a] OFHEO will analyze the risk characteristics and determine whether an existing approach specified in the Appendix appropriately captures the risk of the New Activity or whether some combination or adaptation of existing approaches specified in the Appendix is appropriate. For example, the Stress Test might employ its mortgage performance components and adapt its cash flow components to simulate accurately the

loss mitigating effects and counterparty credit risk of credit derivatives.

[b] Where there is no reasonable approach using existing combinations or adaptations of treatments specified in this Appendix that could be applied within the timeframe for computing a quarterly capital calculation, the Stress Test will employ an appropriately conservative treatment, consistent with OFHEO's role as a safety and soundness regulator. Such treatment may include an alternative modeling treatment specified in section 3.9, Alternative Modeling Treatments, of this Appendix, or some other conservative treatment that OFHEO deems more appropriate.

[c] OFHEO will provide the Enterprise with its estimate of the capital treatment as soon as possible after receiving notice of the New Activity. In any event, the Enterprise will be notified of the capital treatment in accordance with the notice of proposed capital classification provided for in §1750.21.

[d] After a treatment has been incorporated into a final capital classification, OFHEO will provide notice of such treatment to the public, including the other Enterprise. OFHEO will consider any comments it receives from the public regarding the treatment during subsequent quarters. OFHEO may change the treatment as a result of such input or otherwise, if OFHEO determines that the risks of the New Activity are not appropriately reflected in a treatment previously adopted.

3.11.4 New Enterprise Activities Outputs

The Stress Test will generate a set of cash and/or accounting flows reflecting the treatment applied to the New Activity.

3.12 Calculation of the Risk-Based Capital Requirement

3.12.1 Risk-Based Capital Requirement Overview

The risk-based capital requirement is the sum of (1) the minimum amount of total capital that an Enterprise must hold at the start of the Stress Test in order to maintain positive total capital throughout the ten-year Stress Period, for all financial instruments explicitly modeled in the Stress Test (Stress Test capital subtotal) and (2) certain additional amounts relating to off-balance-sheet items addressed in section 3.9, Alternative Modeling Treatments, of this Appendix, and (3) 30 percent of that sum for management and operations risk. The Stress Test capital subtotal is determined based on monthly total capital figures from the pro forma financial statements, the additional amounts related to off-balance-sheet items, and Enterprise short term borrowing and investment rates.

3.12.2 Risk-Based Capital Requirement Inputs

[a] Inputs to the capital calculation are outputs from section 3.3, Interest Rates, section 3.9, Alternative Modeling Treatments, and section 3.10, Operations, Taxes, and Accounting, of this Appendix.

[b] For each month of the Stress Test, the following inputs are from, or used in the creation of, pro forma financial statements projected in section 3.10, Operations, Taxes, and Accounting, of this Appendix:

1. Total capital
   a. The par or stated value of outstanding common stock,
   b. The par or stated value of outstanding perpetual, noncumulative preferred stock,
   c. Paid-in capital,
   d. retained earnings, and
   e. allowance for losses on retained and sold mortgages less specific losses calculated in accordance with FAS 114,
2. Provision for income taxes (income tax expense),
3. Valuation adjustment that reduces benefits recorded from net operating losses when no net operating loss tax carrybacks are available, and
4. An Enterprise's cash position prior to the decision to issue new debt or purchase new investments to balance the balance sheet (*see* section 3.10.3.1, New Debt and Investments, of this Appendix).

[c] For present-value calculations, the Stress Test uses the six-month Enterprise Cost of Funds or the six-month CMT yield as described in section 3.3, Interest Rates, of this Appendix.

[d] The amount for off-balance-sheet items that are not explicitly modeled is obtained from section 3.9.3.1, Off-Balance Sheet Items, of this Appendix.

3.12.3 Risk-Based Capital Requirement Procedures

[a] The following eight steps are used to determine the Stress Test capital subtotal and the risk-based capital requirement for an Enterprise:

1. Determine the effective tax rate in each month. If the provision for income taxes is positive (reflecting taxes owed) or negative (reflecting tax refunds to be received), then the effective tax rate is 30 percent. If the provision for income taxes is zero after applying any valuation adjustments (*see* section 3.10.3.6, Accounting, of this Appendix), then the effective tax rate applied in step 3. of this section is zero.
2. Determine whether an Enterprise is an investor or a borrower in each month of the Stress Period. In months where an Enterprise has outstanding six-month discount notes that were issued during the stress test, then the Enterprise is a borrower. Otherwise, the Enterprise is an investor.
3. Determine the appropriate monthly discount factor for each month of the Stress Period:
   a. In months where an Enterprise is an investor, the monthly discount factor is based on the yield of short-term assets:

$$\text{Monthly Discount Factor} = \left[1 + \frac{(1 - \text{Effective Tax Rate}) \times \text{6-month CMT yield}}{2}\right]^{1/6}$$

   b. In months where an Enterprise is a borrower, the monthly discount factor is based on the cost of the Enterprise's short-term debt:

$$\text{Monthly Discount Factor} = \left[\frac{1 + \left[(1 - \text{Effective Tax Rate}) \times \left(\frac{\text{6-month Enterprise Cost of Funds}}{2}\right)\right]}{1 - \left[(1 - \text{Effective Tax Rate}) \times 0.00025\right]}\right]^{1/6}$$

Where:

0.00025 is the factor that incorporates the issuance and administrative costs for an Enterprise's new discount notes.

4. Compute the appropriate cumulative discount for each month of the Stress Period. The cumulative discount factor for a given month is the monthly discount factor for that month multiplied by the cumulative discount factor for the preceding month. (The cumulative discount factor for the first month of the Stress Period is the monthly discount factor for that month.) Thus, the cumulative discount factor for any month incorporates all of the previous monthly discount factors.
5. Discount total capital for each month of the Stress Period to the start of the Stress Period for both interest rate scenarios. Divide the total capital for a given month by the cumulative discount factor for that month.
6. Identify the Stress Test capital subtotal, which is the lowest discounted total capital amount from among the 240 monthly discounted total capital amounts.
7. From the Stress Test capital subtotal, subtract the capital required for off-balance sheet items not explicitly modeled in the Stress Test, as calculated

in section 3.9.3.1, Off-Balance Sheet Items, of this Appendix. Then subtract the resulting difference from the Enterprise's total capital at the start of the Stress Period. The resulting number is the amount of total capital that an Enterprise must hold at the start of the Stress Test in order to maintain positive total capital throughout the ten-year Stress Period.

8. Multiply the minimum total capital amount by 1.3 for management and operations risk.

3.12.4 Risk-Based Capital Requirement Output

The output of the calculations in this section is the risk-based capital requirement for an Enterprise at the start date of the Stress Test.

4.0 Glossary

This glossary is intended to define terms in the Regulatory Appendix that are used in a computationally specific sense that require a precise quantitative definition.

A

Accounting Flows: one or more series of numbers tracking various components of the accounting computations over time, analogous to ''Cash Flows.''

Age: of a Mortgage Loan, for computational purpose: the number of scheduled payment dates that have occurred prior to the time at which the Age is determined. The Age of a newly originated Mortgage is zero prior to its first payment date.

Amortization Expense: used in the accounting sense of the monthly allocation of a one-time amount (positive or negative) over time, not to describe amortization of principal in a mortgage.

Amortization Schedule: for a Mortgage Loan, a series of numbers specifying the (1) principal and (2) interest components of each Mortgage Payment, and (3) the Unpaid Principal Balance after each such payment is made.

Allocated Interest: in certain accounting calculations, the amount of interest deemed to be received on a certain date according to an allocation formula, whether or not equal to the amount actually received on that date (*see,* e.g., section 3.6.3.8.3, Whole Loan Accounting Flows Procedures, of this Appendix).

Aggregate Limit: see section 3.6.3.6.4.1, Mortgage Credit Enhancement Overview, of this Appendix.

B

Balance Limit: see section 3.6.3.6.4.1, Mortgage Credit Enhancement Overview, of this Appendix.

Balloon Payment: the final payment of a Balloon Loan, the principal component of which is the entire Unpaid Principal Balance of said loan at the time the Balloon Payment is contractually due.

Balloon Loan: a Mortgage Loan that matures before the Unpaid Principal Balance is fully amortized to zero, thus requiring a large final Balloon Payment.

Balloon Date: the maturity date of a Balloon Loan.

Benchmark: used as an adjective to refer to the economic environment (including interest rates, house prices, and vacancy and rental rates) that prevailed in the region and time period of the Benchmark Loss Experience.

Benchmark Census Division: the Census Division, designated by OFHEO, that is used to determine house prices and vacancy and rental rates of the Stress Period.

Benchmark Loss Experience (BLE): the rates of default and loss severity of loans in the state/year combination (containing at least two consecutive origination years and contiguous areas with a total population equal to or greater than five percent of the population of the United States) with the highest loss rate.

Burnout: in describing Mortgage Prepayments, the reduced rates of Prepayment observed with Mortgage Loans that were not prepaid during earlier periods when it would have been advantageous to do so.

C

Cash Flow Hedges: cash flow hedges as defined by FAS 133.

Census Division: any one of the nine geographic areas of the United States so designated by the Bureau of the Census. The OFHEO House Price Index determined at the Census Division level is used in the Stress Test.

Claim Amount: the amount of Credit Enhancement that an Enterprise is eligible to receive as a reimbursement on mortgage loan losses, which is often but not always equal to the total amount of the loss.

Commitment Loan Groups: hypothetical groups of Mortgage Loans assumed to be originated during the months immediately after the start of the Stress Test pursuant to Commitments made but not yet fulfilled by the Enterprises prior to the start of the Stress Test to purchase or securitize loans.

Contract: a Mortgage Credit Enhancement contract covering a distinct set of loans with a distinct set of contractual terms.

Constant Maturity Treasury (CMT) Rate: see table 3–18, Interest Rate and Index Inputs.

Counterparty Type: classification used to specify the appropriate Haircut level in section 3.5, Counterparty Defaults, of this Appendix.

Credit Enhancement: for the GSEs, agreements with lenders or third-parties put in place to reduce or limit mortgage credit (default) losses for an individual loan. *See* section 3.1.2.1.1, Loan Group Inputs, of this Appendix.

D

Debt Service Coverage Ratio: see section 3.6.3.5.3.1, Explanatory Variables, of this Appendix.

Default: for purposes of computing rates of mortgage default and losses, *see* the specific process specified in section 3.6.1, Whole Loan Cash Flows Overview, of this Appendix.

Defaulting Fraction: in any month, for any group of loans, the proportion of loans newly defaulted in that month expressed as a fraction of the *initial* loans (by number or by balance, depending on how Prepayment and Default Rates are measured) in the loan group; *see*, e.g., section 3.6.3.4.3.2, Prepayment and Default Rates and Performance Fractions, of this Appendix.

Defaulted UPB: the Unpaid Principal Balance (UPB) of a loan in the month that it Defaults.

Deferred Balances: see section 3.6.3.8.1, Whole Loan Accounting Flows Overview, of this Appendix.

Derivative Mortgage Security: generally refers to securities that receive cash flow with significantly different characteristics than the aggregate cash flow from the underlying mortgage loans, such as Interest-Only or Principal-Only Stripped MBSs or REMIC Residual Interests. *See* section 3.7.1, Mortgage-Related Securities Overview, of this Appendix.

Deposit Limit: see section 3.6.3.6.4.1, Mortgage Credit Enhancement Overview, of this Appendix.

Distinct Credit Combination (DCC): see section 3.6.3.6.4.1, Mortgage Credit Enhancement Overview, of this Appendix.

E

Enterprise Cost of Funds: for any maturity, the Federal Agency Cost of Funds (*see* section 3.3, Interest Rates, of this Appendix).

Enterprise Loss Position: see section 3.6.3.6.4.1, Mortgage Credit Enhancement Overview, of this Appendix.

F

Fair Value Hedges: fair value hedges as described in FAS 133.

Float Income: the earnings on the investment of loan principal and interest payments (net of the Servicing Fee and Guarantee Fee) from the time these payments are received from the servicer until they are remitted to security holders. *See* section 3.6.1, Whole Loan Cash Flows Overview, of this Appendix.

G

Gross Loss Severity: Loss Severity including the excess, if any, of Defaulted UPB over gross sale price of an REO property, fees, expenses and certain unpaid interest amounts, before giving effect to Credit Enhancement or any other amounts received on account of a defaulted loan (all such amounts expressed as a fraction of Defaulted UPB); *see* section 3.6.3.6.2, Single Family Gross Loss Severity, and section 3.6.3.6.3, Multifamily Gross Loss Severity, of this Appendix.

Guarantee Fee: the amount received by an Enterprise as payment for guaranteeing a mortgage loan; *see*, e.g., section 3.6.3.2, Payment Allocation Conventions, of this Appendix.

H

Haircut: the amount by which payments from a counterparty are reduced to account for a given probability of counterparty failure.

I

Initial: used as an adjective to specify conditions at the start of the Stress Test, except in defined terms; *see also* Time Zero.

Initial Rate Period: for an Adjustable Rate Mortgage, the number of months before the mortgage interest rate changes for the first time. Also known as ''teaser period.''

Interest-only Period: for interest-only loans, the period of time for which the monthly payment covers only the interest due. (During the interest-only period, the UPB of the loan stays constant until maturity or a changeover date. For loans that mature, a Balloon Payment in the amount of the UPB is due at maturity. In other cases, the loan payment is recast at the changeover date and the loan begins to amortize over its remaining term.) *See* section 3.6.3.3.1, Mortgage Amortization Schedule Overview, of this Appendix.

Interest Rates: the Constant Maturity Treasury yields and other interest rates and indexes used in the Stress Test.

Investor-owned: a property that is not owner-occupied.

L

Loan Limit: used to describe a type of Credit Enhancement; *see* section 3.6.3.6.4.1, Mortgage Credit Enhancement Overview, of this Appendix.

Loan Group: a group of one or more mortgage loans with similar characteristics, that are treated identically for computational purposes in the Risk-Based Capital calculations.

Loss Severity: the amount of a mortgage loss divided by the Defaulted UPB.

Loss Sharing Arrangements (LSA): see section 3.6.3.6.4.1, Mortgage Credit Enhancement Overview, of this Appendix.

M

Maximum Haircut: as defined in section 3.5, Counterparty Defaults, of this Appendix.

Modified Pool Insurance: a form of Single Family Mortgage Credit Enhancement described in section 3.6.3.6.4.1, Mortgage Credit Enhancement Overview, of this Appendix.

Mortgage Insurance (Primary Mortgage Insurance): a type of credit enhancement that pays claims up to a given limit on each loan. *See* section 3.6.3.6.4.1, Mortgage Credit Enhancement Overview, of this Appendix.

Mortgage Related Security: a collective reference for (1) securities directly backed by mortgage loans, such as Single Class MBSs, Multi-Class MBSs (REMICs or Collaterilized Mortgage Obligations (CMOs)); (2) Derivative Mortgage-Backed Securities (certain multi-class and strip securities) issued by Fannie Mae, Freddie Mac, and Ginnie Mae; (3) Mortgage Revenue Bonds issued by State and local governments and their instrumentalities; or (4) single class and Derivative Mortgage-Backed Securities issued by private entities. *See* section 3.1.2.2, Mortgage-Related Securities Inputs, of this Appendix.

N

Negative Amortization: as defined in section 3.6.3.2.1, Allocation of Mortgage Interest, of this Appendix.

Net Loss Severity: Gross Loss Severity reduced by Credit Enhancements and any other amounts received on account of a defaulted loan (all such amounts expressed as a fraction of Defaulted UPB).

Net Yield Rate: the Mortgage Interest Rate minus the Servicing Fee Rate.

New Activity: as defined in section 3.11, Treatment of New Enterprise Activities, of this Appendix.

Notional Amount: the amount analogous to a principal balance which is used to calculate interest payments in certain swap transactions or derivative securities.

O

Original: used as an adjective to specify values in effect at Loan Origination.

Origination: for a Mortgage Loan with monthly payments, the date one month prior to the first contractual payment date.

Owner-Occupied: a property, or a Mortgage Loan backed by a property, that is a single family residence which is the primary residence of the owner.

P

Pass-Through Rate: the Mortgage Interest Rate minus the Servicing Fee and the Guarantee Fee.

Performing Fraction: in any month, for any group of loans, the proportion of loans that have not either prepaid or defaulted in that month or any prior month, expressed as a fraction of the loans at the start of the Stress Test (by number or by balance, depending on how Prepayment and Default rates are measured) in a loan group; *see* e.g., section 3.6.3.4.3.2, Prepayment and Default Rates and Performance Fractions, of this Appendix.

Prepaying Fraction: in any month, for any group of loans, the proportion of loans that prepay in full in that month expressed as a fraction of the loans at the start of the Stress Test (by number or by balance, depending on how Prepayment and Default rates are measured) in the loan group; *see* e.g., section 3.6.3.4.3.2, Prepayment and Default Rates and Performance Fractions, of this Appendix.

Prepayment: the prepayment in full of a loan before its contractual maturity date

Prepayment Interest Shortfall: as defined in section 3.6.3.1, Timing Conventions, of this Appendix.

R

Risk-Based Capital (RBC) Report: The form in which Enterprise data is to be submitted for purposes of calculating the risk-based capital requirement, as described in section 3.1, Data, of this Appendix.

Relative Spread: as defined in section 3.6.3.4.3.1, Single Family Default and Prepayment Explanatory Variables, of this Appendix.

Retained Loans: as described in section 3.6.1, Whole Loan Cash Flows Overview, of this Appendix.

S

Scheduled Principal: the amount of principal reduction that occurs in a given month according to the Amortization Schedule of a mortgage loan; *see* section 3.6.3.3, Mortgage Amortization Schedule, of this Appendix.

Servicing Fee: portion of mortgage interest payment retained by servicer.

Sold Loans: as described in section 3.6.1, Whole Loan Cash Flows Overview, of this Appendix.

Spread Accounts: a form of Credit Enhancement; section 3.6.3.6.4, Mortgage Credit Enhancement, of this Appendix.

Stress Period: the 10-year period covered by the Stress Test simulation.

Stress Test: the calculation, which applies specified economic assumptions to Enterprise portfolios, described in this Appendix.

Strike Rate: the interest rate above/below which interest is received for caps/floors.

Subordination Agreements: a form of Credit Enhancement in which the cash flows allocable to a portion of a mortgage pool are used to cover losses on loans allocable to another portion of the mortgage pool; *see* section 3.6.3.6.4, Mortgage Credit Enhancement, of this Appendix.

T

Time Zero: used to designate the conditions in effect at the start of the Stress Test, as defined in section 3.6.3.1, Timing Conventions, of this Appendix.

U

Unpaid Principal Balance (UPB): the Unpaid Principal Balance of a loan or loan group based solely on its Amortization Schedule, without giving effect to any missed or otherwise unscheduled payments.

W

Whole Loan: a mortgage loan.

Dated: July 19, 2001.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 01–18459 Filed 9–12–01; 8:45 am]

BILLING CODE 4220–01–U

Reader Aids

Federal Register

Vol. 66, No. 178

Thursday, September 13, 2001

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@listserv.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

46211–46364 4
46365–46508 5
46509–46692 6
46693–46936 7
46937–47060 10
47061–47378 11
47379–47570 12
47571–47876 13

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7459.................................46507
7460.................................47569
Administrative Orders
Presidential
Determinations:
No. 2001–24 of August
18, 2001 46693
No. 2001–25 of August
18, 2001 46695

5 CFR

Proposed Rules:
213...68

7 CFR

301 ....46365, 46509, 46692
354.................................46211
Proposed Rules:
735.................................46310
736.................................46310
737.................................46310
738.................................46310
739.................................46310
740.................................46310
741.................................46310
742.................................46310

8 CFR

3.....................................47379
214.................................46697
245.................................46697
248.................................46697
274a...............................46697
299.................................46697

9 CFR

54...................................46686
79...................................46686
Proposed Rules:
51...................................47593
94...................................46228

10 CFR

72...................................47380
710.................................47061
Proposed Rules:
2.....................................46230
20...................................46230
50...................................46230
72...................................47059
852.................................46742

11 CFR

Proposed Rules:
100.................................47120
104.................................47120
113.................................47120

12 CFR

749.................................46307
1510...............................47070
1750...............................47730
1770...............................47550
Proposed Rules:
1710...............................47557
1773...............................47563

13 CFR

120.................................47072
134.................................47072

14 CFR

25...................................46937
39 ....46214, 46509, 46510,
46512, 46515, 46517, 46939,
47380, 47571, 47573, 47575
71 ....46216, 46366, 47577
91...................................47372
97.........................46940, 47074
103.................................47372
Proposed Rules:
39 ....46239, 46241, 46243,
46246, 46247, 46562, 46968,
47600
71.........................46366, 47120
121.................................46308
139.................................46308
161.................................47601

15 CFR

922.................................46942
Proposed Rules:
801.................................46407

17 CFR

3.....................................47059
170.................................47059

19 CFR

148.................................46217

20 CFR

1.....................................47382
30...................................47382
Proposed Rules:
200.................................46408

21 CFR

510 ....46367, 46368, 46518
520.................................46369
522.................................46705
524 ....46368, 46369, 46705
556.................................46370
558 ....46371, 46518, 46705,
47076
872.................................46951
878.................................46951
880.................................46951
882.................................46951
884.................................46951
892.................................46951
1313...............................46519

Proposed Rules:
888....46563
1300....46567
1301....46567
1304....46567
1305....46567
1306....46567

24 CFR

Proposed Rules:
203....46502

25 CFR

103....46307

28 CFR

0....47379, 47382

32 CFR

230....46372
231....46707
231a....46372

33 CFR

100....46374, 46375, 46377, 46521, 47384
117....46522, 46523, 46525, 47077, 47577, 47578
165....46218, 47385

Proposed Rules:
117....47121, 47123, 47601

36 CFR

Proposed Rules:
1230....47125
1254....46752

37 CFR

1....47387
104....47387

Proposed Rules:
1....46409
260....46250

38 CFR

Proposed Rules:
17....46499

40 CFR

52....46220, 46379, 46525, 46727, 46953, 47078, 47083, 47086, 47392, 47578
62....46960
63....47579
81....47086
141....46221
180....46381, 46390, 46729, 47394, 47403
271....46961
300....46533, 47093, 47583

Proposed Rules:
52....46415, 46571, 46573, 46753, 46754, 46755, 46758, 46760, 46971, 47129, 47130, 47139, 47142, 47145, 47419, 47603
62....46972
63....47611
70....46972, 47428
141....46251, 46928
180....46415
271....46976
300....46574, 47153, 47612

42 CFR

2....47591
52....47591
412....46902
422....47410
447....46397

Proposed Rules:
431....46763

45 CFR

Ch. XI....47095
96....46225
670....46739

Proposed Rules:
1611....46976
1626....46977

46 CFR

Proposed Rules:
67....47431
68....47431

47 CFR

2....47591
52....47591
73....46399, 47413

Proposed Rules:
2....47618, 47621
73....46425, 46426, 46427, 47432, 47433
90....47435

48 CFR

204....47096
207....47107
219....47108
226....47110
252....47096, 47108, 47110, 47112
253....47096

Proposed Rules:
213....47153
225....47155
226....47158
244....47159
247....47153
252....47153, 47155

49 CFR

199....47114

Proposed Rules:
172....47443
174....47443
175....47443
176....47443
177....47443

50 CFR

17....46536, 46548
32....46346
300....46740
635....46400, 46401
648....47413
660....46403, 46966
679....46404, 46967, 47416, 47417, 47418, 47591

Proposed Rules:
17....46251, 46428, 46575
223....47625
648....46978, 46979

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 12, 2001

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:
State operating permits program—
Washington; published 8-13-01
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bromoxynil; published 9-12-01
Fludioxonil; published 9-12-01

FEDERAL COMMUNICATIONS COMMISSION

Freedom of Information Act; implementation:
Allowable direct costs of searching and reviewing records; modifications; published 8-13-01

JUSTICE DEPARTMENT

Executive Office for Immigration Review:
Immigration Appeals Board; expansion to 23 permanent members to handle increasing caseload; published 9-12-01

NATIONAL SCIENCE FOUNDATION

Antarctic Conservation Act of 1978:
Antarctic non-governmental expeditions; published 8-13-01

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list; published 6-29-01

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
BAE Systems (Operations) Ltd.; published 8-8-01
Boeing; published 8-8-01

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Prunes (dried) produced in—
California; comments due by 9-19-01; published 8-20-01

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Export certification:
Canadian solid wood packing materials exported from United States to China; heat treatment; comments due by 9-17-01; published 7-17-01
Hawaiian and territorial quarantine notices:
Rambutan, longan, and litchi from Hawaii; comments due by 9-17-01; published 7-18-01
Plant-related quarantine, domestic:
Gypsy moth; comments due by 9-17-01; published 7-17-01
Karnal bunt; comments due by 9-17-01; published 7-19-01
Pine shoot beetle; comments due by 9-17-01; published 7-18-01
Poultry improvement:
National Poultry Improvement Plan and auxiliary provisions—
Plan participants and participating flocks; new or modified sampling and testing procedures; comments due by 9-18-01; published 7-20-01
Viruses, serums, toxins, etc.:
Erysipelothrix rhusiopathiae bacterin; comments due by 9-17-01; published 7-17-01

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries, and Gulf of Mexico and South Atlantic spiny lobster—
Tortugas Marine Reserves establishment; comments due by 9-17-01; published 7-19-01
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico shrimp; comments due by 9-17-01; published 7-19-01
West Coast States and Western Pacific fisheries—
West Coast salmon; comments due by 9-20-01; published 9-5-01

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Pennsylvania; comments due by 9-19-01; published 8-20-01
Air quality implementation plans:
Preparation, adoption, and submittal—
Regional haze standards; best available retrofit technology determinations; implementation guidelines; comments due by 9-18-01; published 7-20-01
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 9-19-01; published 8-20-01
Kentucky; comments due by 9-19-01; published 8-20-01
Maryland; comments due by 9-19-01; published 8-20-01
Pennsylvania; comments due by 9-19-01; published 8-20-01
Wisconsin; comments due by 9-17-01; published 8-16-01
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Colorado; comments due by 9-21-01; published 8-22-01
Hazardous waste program authorizations:
Idaho; comments due by 9-21-01; published 8-22-01
Indiana; comments due by 9-17-01; published 8-17-01
South Carolina; comments due by 9-20-01; published 8-21-01
Vermont; comments due by 9-17-01; published 8-16-01
Pesticide programs:
Plant-incorporated protectants (formerly plant-pesticides)—
Plants sexually compatible with recipient plant; exemptions; comments due by 9-19-01; published 8-20-01
Superfund program:
Community right-to-know toxic chemical release reporting—
Lead and lead compounds; comments due by 9-20-01; published 8-21-01
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 9-20-01; published 8-21-01
National priorities list update; comments due by 9-20-01; published 8-21-01
Toxic substances:
Significant new uses—
Polymer of substituted aryl olefin, etc.; comments due by 9-17-01; published 8-16-01
Resorcinol, formaldehyde substituted carbomonocycle resin, etc.; comments due by 9-17-01; published 8-16-01

FEDERAL COMMUNICATIONS COMMISSION

Digital television stations; table of assignments:
Florida; comments due by 9-17-01; published 8-1-01
Louisiana; comments due by 9-21-01; published 8-6-01
Maine; comments due by 9-21-01; published 8-6-01
Michigan; comments due by 9-21-01; published 8-6-01
Montana; comments due by 9-17-01; published 8-1-01
New Mexico; comments due by 9-17-01; published 8-2-01
Texas; comments due by 9-17-01; published 8-1-01
West Virginia; comments due by 9-21-01; published 8-6-01
Radio stations; table of assignments:
California; comments due by 9-17-01; published 8-8-01
Kentucky; comments due by 9-17-01; published 8-8-01
New Hampshire; comments due by 9-17-01; published 8-8-01

FEDERAL EMERGENCY MANAGEMENT AGENCY

Disaster assistance:

Fire Management Assistance Grant Program; comments due by 9-17-01; published 8-1-01

INTERIOR DEPARTMENT

Fish and Wildlife Service

Importation, exportation, and transportation of wildlife:

Anchorage, AK; designated port status; hearing; comments due by 9-19-01; published 8-20-01

JUSTICE DEPARTMENT

Executive Office for Immigration Review:

Deportation suspension; special procedure for filing and adjudication of motions to reopen proceedings; comments due by 9-17-01; published 7-17-01

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright arbitration royalty panel rules and procedures:

Digital performance of sound recordings; reasonable rates and terms determination; comments due by 9-19-01; published 9-4-01

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records management:

Records disposition procedures; simplification; comments due by 9-17-01; published 7-17-01

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 9-20-01; published 8-21-01

POSTAL SERVICE

Domestic Mail Manual

Mail delivery to commercial mail receiving agency; comments due by 9-17-01; published 8-3-01

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Florida; comments due by 9-17-01; published 7-19-01

Regatttas and marine parades:

Virginia Beach, VA; fireworks display; comments due by 9-17-01; published 7-17-01

TRANSPORTATION DEPARTMENT

Standard time zone boundaries:

North Dakota; comments due by 9-17-01; published 8-3-01

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

Digital flight data recorder resolution requirements; comments due by 9-21-01; published 8-22-01

Airworthiness directives:

Airbus; comments due by 9-17-01; published 8-16-01

Dornier; comments due by 9-21-01; published 8-21-01

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 9-20-01; published 8-21-01

Empresa Brasileira de Aeronautica, S.A. (EMBRAER); comments due by 9-17-01; published 8-17-01

Fokker; comments due by 9-17-01; published 8-17-01

GARMIN International; comments due by 9-21-01; published 8-6-01

McDonnell Douglas; comments due by 9-17-01; published 8-3-01

Pilatus Aircraft Ltd.; comments due by 9-21-01; published 8-22-01

Reims Aviation S.A.; comments due by 9-18-01; published 8-21-01

Saab; comments due by 9-17-01; published 8-17-01

Short Brothers; comments due by 9-17-01; published 8-17-01

Class C airspace; comments due by 9-21-01; published 7-27-01

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Booster seats; use and effectiveness; public views; comments due by 9-17-01; published 8-16-01

Noncompliant and defective motor vehicles and items of motor vehicle equipment; sale and lease limitations; comments due by 9-21-01; published 7-23-01

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcoholic beverages:

American wines; new prime grape variety names; comments due by 9-17-01; published 7-19-01

Denatured alcohol and rum; distribution and use; comments due by 9-17-01; published 7-17-01

TREASURY DEPARTMENT

Customs Service

Administrative rulings; comments due by 9-17-01; published 7-17-01

VETERANS AFFAIRS DEPARTMENT

Board of Veterans Appeals:

Appeals regulations and rules of practice—

Veterans Health Administration; medical opinions; comments due by 9-21-01; published 7-23-01

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg.*

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/index.html*. Some laws may not yet be available.

H.R. 93/P.L. 107–27

Federal Firefighters Retirement Age Fairness Act (Aug. 20, 2001; 115 Stat. 207)

H.R. 271/P.L. 107–28

To direct the Secretary of the Interior to convey a former Bureau of Land Management administrative site to the city of Carson City, Nevada, for use as a senior center. (Aug. 20, 2001; 115 Stat. 208)

H.R. 364/P.L. 107–29

To designate the facility of the United States Postal Service located at 5927 Southwest 70th Street in Miami, Florida, as the ''Marjory Williams Scrivens Post Office''. (Aug. 20, 2001; 115 Stat. 209)

H.R. 427/P.L. 107–30

To provide further protections for the watershed of the Little Sandy River as part of the Bull Run Watershed Management Unit, Oregon, and for other purposes. (Aug. 20, 2001; 115 Stat. 210)

H.R. 558/P.L. 107–31

To designate the Federal building and United States courthouse located at 504 West Hamilton Street in Allentown, Pennsylvania, as the ''Edward N. Cahn Federal Building and United States Courthouse''. (Aug. 20, 2001; 115 Stat. 213)

H.R. 821/P.L. 107–32

To designate the facility of the United States Postal Service located at 1030 South Church Street in Asheboro, North Carolina, as the ''W. Joe Trogdon Post Office Building''. (Aug. 20, 2001; 115 Stat. 214)

H.R. 988/P.L. 107–33

To designate the United States courthouse located at 40 Centre Street in New York, New York, as the ''Thurgood Marshall United States Courthouse''. (Aug. 20, 2001; 115 Stat. 215)

H.R. 1183/P.L. 107–34

To designate the facility of the United States Postal Service located at 113 South Main Street in Sylvania, Georgia, as the ''G. Elliot Hagan Post Office Building''. (Aug. 20, 2001; 115 Stat. 216)

H.R. 1753/P.L. 107–35

To designate the facility of the United States Postal Service located at 419 Rutherford Avenue, N.E., in Roanoke, Virginia, as the ''M. Caldwell Butler Post Office Building''. (Aug. 20, 2001; 115 Stat. 217)

H.R. 2043/P.L. 107–36

To designate the facility of the United States Postal Service located at 2719 South Webster Street in Kokomo, Indiana, as the ''Elwood Haynes 'Bud' Hillis Post Office Building''. (Aug. 20, 2001; 115 Stat. 218)

Last List August 21, 2001

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://hydra.gsa.gov/archives/publaws-l.html* or send e-mail to **listserv@listserv.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for e-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.