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WHEN: Tuesday, March 13, 2007
9:00 a.m.–Noon

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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 72, No. 39

Wednesday, February 28, 2007

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Farm Service Agency
See Forest Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8959

Air Force Department
NOTICES
Environmental statements; record of decision:
Cannon Air force Base, NM; New Mexico training range initiative, 8973–8974
Hickman Air Force Base et al., HI; housing privatization phase II, 8974

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Rice; genetically engineered to express lactoferrin, lysozyme, or serum albumin; field tests, 8959–8960
Meetings:
National Animal Identification System; animal identification number device distribution databases, 8960–8961

Army Department
NOTICES
Environmental statements; availability, etc.:
Fort Belvoir, VA; base closure and realignment actions, 8974

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Broadcasting Board of Governors
NOTICES
Senior Executive Service Performance Review Board; membership, 8962

Census Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8963–8966

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 9005

Commerce Department
See Census Bureau
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8962–8963

Commodity Credit Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8961–8962

Comptroller of the Currency
NOTICES
Reports and guidance documents; availability, etc.:
Risk-based capital; internal ratings-based systems for credit risk, advanced measurement approaches for operational risk, etc.; supervisory guidance, 9084–9193

Customs and Border Protection Bureau
NOTICES
Country of origin determinations:
Digital color multifunctional systems, 9014–9017

Defense Department
See Air Force Department
See Army Department
PROPOSED RULES
Secretary of Defense Office files; historical research policies and procedures, 8952–8957
NOTICES
Meetings:
Historical Advisory Committee, 8973
Science Board, 8973

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8975–8976
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Disability and Rehabilitation Research Projects and Centers Program; correction, 8976–8977

Election Assistance Commission
NOTICES
Meetings; Sunshine Act, 8977

Employment and Training Administration
NOTICES
Adjustment assistance; applications, determinations, etc.:
Airtex Products LP, 9028
Anaheim Manufacturing Co., 9029
Delphi Corp., 9029
Georgia Narrow Fabrics et al., 9029–9030
Jones Apparel Group, Inc., 9030
Mid-West Wire Products Inc., 9030–9031
Committees; establishment, renewal, termination, etc.:
Apprenticeship Charter Advisory Committee, 9031

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
DOE/NSF Nuclear Science Advisory Committee, 8977–8978
Environmental Management Site-Specific Advisory Board—
Northern New Mexico, 8978–8979

Oak Ridge Reservation, TN, 8979
Paducah Gaseous Diffusion Plant, KY, 8979

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
West Virginia, 8903–8913
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts, 8913–8916
Halosulfuron-methyl, 8923–8927
Orthosulfamuron, 8928–8931
Sethoxydim, 8916–8923
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8983–8985
Air programs:
Ambient air monitoring reference and equivalent methods—
SIR S.A. Model S-5014 Photometric O3 Analyzer; equivalent method designation, 8985–8986
Pesticide, food, and feed additive petitions:
Nichino America, Inc., et al., 9000–9002
Pesticide registration, cancellation, etc.:
Dimethoate, 8986–8988
Isomate-CM/LR TT, 8988–8989
Mefenoxam EC D-Alainin, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester, etc., 8989–9000

Executive Office of the President
See Presidential Documents

Farm Service Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8961–8962

Federal Aviation Administration
RULES
Airworthiness standards:
Special conditions—
Dassault Aviation Model Falcon 7X airplane, 8882–8887
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 9057–9058

Federal Deposit Insurance Corporation
NOTICES
Reports and guidance documents; availability, etc.:
Risk-based capital; internal ratings-based systems for credit risk, advanced measurement approaches for operational risk, etc.; supervisory guidance, 9084–9193

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8980–8981
Meetings:
Transcontinental Gas Pipe Line Corp., 8983
Applications, hearings, determinations, etc.:
Gulf South Pipeline Co., LP, 8981
High Prairie Wind Farm II, LLC, 8981–8982
Nevada Solar One, LLC, 8982
Viking Gas Transmission Co., 8982–8983

Federal Maritime Commission
NOTICES
Agreements filed, etc., 9002

Federal Motor Carrier Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Drivers' hours of service—
Electronic on-board recorders; public listening session, 8957–8958
NOTICES
Meetings:
Commercial Driver's License Advisory Committee, 9058–9059

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Union Railroad Co., 9059
Railroad safety:
Locomotive Safety Standards Working Group waivers and documents; collection docket established, 9059–9060
Traffic control systems; discontinuance or modification:
Canadian National Railway, 9060–9061
CSX Transportation, 9061

Federal Reserve System
NOTICES
Reports and guidance documents; availability, etc.:
Risk-based capital; internal ratings-based systems for credit risk, advanced measurement approaches for operational risk, etc.; supervisory guidance, 9084–9193

Federal Trade Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9002–9005

Federal Transit Administration
NOTICES
Reports and guidance documents; availability, etc.:
Other Than Urbanized Areas Formula Grants Program; circular, 9062–9073

Fish and Wildlife Service
RULES
Migratory bird permits:
Defense Department; migratory birds take, 8931–8950
NOTICES
Environmental statements; availability, etc.:
Vieques National Wildlife Refuge, PR; comprehensive conservation plan, 9018–9019
Environmental statements; notice of intent:
National wildlife refuges, ND, 9019–9020
Wetland management districts, ND; comprehensive conservation plan, 9020–9021
Scientific research permit applications, determinations, etc., 8972–8973

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9005–9007
Reports and guidance documents; availability, etc.:
Donors of human cells, tissues, and cellular and tissue-based products; eligibility determination, 9007–9008
Preparation and public availability of information given to advisory committees, 9008–9009

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Delaware
Premcor Refining Group Inc.; oil refinery, 8966
Oklahoma, 8966–8967

Forest Service
NOTICES
Environmental statements; notice of intent:
Nebraska National Forest, NE and SD, 8962

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9009–9010
Meetings:
Childhood Vaccines Advisory Commission, 9010

Homeland Security Department
See Customs and Border Protection Bureau
See U.S. Citizenship and Immigration Services

Indian Affairs Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9021–9025

Industry and Security Bureau
NOTICES
Export privileges, actions affecting:
Kovacs, William, 8967–8969

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See Reclamation Bureau

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9076–9079
Meetings:
Taxpayer Advocacy Panels, 9079–9081

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 8969–8970
Countervailing duties:
Honey from—
Argentina, 8970

Justice Department
RULES
Sex Offender Registration and Notification Act; applicability, 8894–8897

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Privacy Act; systems of records, 9025–9026

Minerals Management Service
RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
American Petroleum Institute; cementing shallow water flow zones; recommended practice; incorporated by reference, 8900–8903
Civil penalty assessment; inflation adjustment, 8897–8899

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Arts National Council, 9033
International Exhibitions Federal Advisory Committee, 9034
National Endowment for the Arts, Chairperson; determinations:
Advisory committees; information and activities; public disclosure, 9034–9035
Arts National Council meetings; potential closures, 9035

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
US SPECS, 9074
Reports and guidance documents; availability, etc.:
Occupant protection in interior impact; 1999-2003 head impact upgrade; evaluation report, 9074–9075

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9010–9012
Inventions, Government-owned; availability for licensing, 9012–9013

National Oceanic and Atmospheric Administration
NOTICES
Environmental statements; availability, etc.:
Steller sea lions and northern fur seals research; public hearings, 8971
Environmental statements; notice of intent:
Magnuson-Stevens Fishery Conservation and Management Reauthorization Act—
Annual catch limits, accountability, and other overfishing provisions; National Standard 1 guidelines; scoping period extended and meetings, 8971
Marine mammal permit applications, determinations, etc., 8972
Scientific research permit applications, determinations, etc., 8972–8973

Nuclear Regulatory Commission
PROPOSED RULES
Nuclear power reactors; security requirements, 8951
NOTICES
Environmental statements; availability, etc.:
Tennessee Valley Authority, 9036–9037
Applications, hearings, determinations, etc.:
Nuclear Management Co., LLC, et al., 9035–9036

Nuclear Waste Technical Review Board
RULES
Privacy Act; implementation, 8879–8882
NOTICES
Privacy Act; systems of records, 9037

Occupational Safety and Health Administration
NOTICES
Nationally recognized testing laboratories, etc.:
Southwest Research Institute, 9031–9033

Patent and Trademark Office
PROPOSED RULES
Practice and procedure:
Representation of others before United States Patent and Trademark Office; changes, 9196–9220

Personnel Management Office
NOTICES
Personnel management demonstration projects:
National Nuclear Security Administration; pay banding and performance-based pay adjustments, 9037–9050

Presidential Documents
ADMINISTRATIVE ORDERS
Chad; waiving prohibition on United States military assistance (Presidential Determination)
No. 2007-13 of February 14, 2007, 9227
Cuba; continuation of the national emergency relating to the anchorage and movement of vessels (Notice of February 26, 2007), 9229–9232
Foreign Assistance Act of 1961; transfer of funds (Presidential Determination)
No. 2007-11 of January 26, 2007, 9221–9223
Palestinian Authority; imposition and waiver of sanctions (Presidential Determination)
No. 2007-12 of February 7, 2007, 9225

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Lake Powell and Lake Mead, NV and AZ; Colorado River interim guidelines for lower basin shortages and coordinated operations; public hearing, 9026–9028

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 9050–9051
NASDAQ Stock Market LLC, 9051–9052
NYSE Arca, Inc., 9052–9054
Philadelphia Stock Exchange, Inc., 9054–9057

State Department
RULES
Deaths and estates, 8887–8894

Substance Abuse and Mental Health Services Administration

NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9013–9014

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Illinois Central Railroad Co., 9076
TRI Owners Association, 9076

Thrift Supervision Office
NOTICES
Reports and guidance documents; availability, etc.:
Risk-based capital; internal ratings-based systems for credit risk, advanced measurement approaches for operational risk, etc.; supervisory guidance, 9084–9193

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Hearings, etc.—
SkyExpress Airline, 9057

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service
See Thrift Supervision Office

U.S. Citizenship and Immigration Services
NOTICES
Immigration:
Freedom of Information Act; special processing track for individuals appearing before an immigration court, 9017–9018

United States Institute of Peace
NOTICES
Meetings; Sunshine Act, 9081

Separate Parts In This Issue

Part II
Federal Deposit Insurance Corporation; Federal Reserve System; Treasury Department, Comptroller of the Currency; Treasury Department, Thrift Supervision Office, 9084–9193

Part III
Commerce Department, Patent and Trademark Office, 9196–9220

Part IV
Executive Office of the President, Presidential Documents, 9221–9223, 9225, 9227

Part V
Executive Office of the President, Presidential Documents, 9229–9232

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.

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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.

3 CFR

Proclamations:

6867 (See Notice of February 26, 2007) 9231

7757 (See Notice of February 26, 2007) 9231

Administrative Orders:

Presidential Determinations:

No. 2007-11 of January 26, 2007 9223

No. 2007-12 of February 7, 2007 9225

No. 2007-13 of February 14, 2007 9227

Notices:

Notice of February 26, 2007 9231

10 CFR

1304 8879

Proposed Rules:

50 8951

72 8951

73 8951

14 CFR

25 8882

22 CFR

72 8887

28 CFR

72 8894

30 CFR

250 (2 documents) 8897, 8900

253 8897

32 CFR

Proposed Rules:

197 8952

37 CFR

Proposed Rules:

11 9196

40 CFR

52 8903

180 (4 documents) 8913, 8916, 8923, 8928

49 CFR

Proposed Rules:

350 8957

385 8957

395 8957

396 8957

50 CFR

21 8931

Rules and Regulations

Federal Register
Vol. 72, No. 39
Wednesday, February 28, 2007

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.

NUCLEAR WASTE TECHNICAL REVIEW BOARD

10 CFR Part 1304

Implementation of Privacy Act of 1974

AGENCY: U.S. Nuclear Waste Technical Review Board.

ACTION: Final rule.

SUMMARY: This document institutes the U.S. Nuclear Waste Technical Review Board's (Board) final rule implementing a set of procedural regulations under the Privacy Act of 1974, Public Law 93–579, 5 U.S.C. 552a. These regulations have been written to conform to the statutory provisions of the Act. They are intended to expedite the processing of Privacy Act requests received by the Board and to ensure the proper dissemination of information to the public.

DATES: Effective February 28, 2007.

FOR FURTHER INFORMATION CONTACT: Victoria Reich, 703–235–4473

SUPPLEMENTARY INFORMATION: The proposed rule was published in the November 22, 2006 **Federal Register** for a public comment period to end on January 22, 2007. Copies of the proposed rule also were posted on the Board's Web site and on the Federal Rulemaking Portal. This rule sets forth the procedures to be used by members of the public when requesting records from the Board under the Privacy Act of 1974. It also establishes time frames for responses from the Board, a fee schedule for copying records, and charges for obtaining information, when applicable. No comments were received on the proposed rule.

Executive order 12866

The proposed regulation does not meet the criteria for a significant regulatory action under Executive order 12866. Therefore, review by the Office of Management and Budget is not required.

Regulatory Flexibility Act

The proposed rule adds Privacy Act regulations to 10 CFR part 1304 and will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The rule is exempt from the requirements of the Paperwork Reduction Act.

List of Subjects in 10 CFR Part 1304

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

■ Therefore, the Board adds part 1304 to Chapter XIII, Title 10 of the Code of Federal Regulations to read as follows:

PART 1304—PRIVACY ACT OF 1974

Sec.

1304.101 Purpose and scope.
1304.102 Definitions.
1304.103 Privacy Act inquiries.
1304.104 Privacy Act records maintained by the Board.
1304.105 Requests for access to records.
1304.106 Processing of requests.
1304.107 Fees.
1304.108 Appealing denials of access.
1304.109 Requests for correction of records.
1304.110 Disclosure of records to third parties.
1304.111 Maintaining records of disclosures.
1304.112 Notification of systems of Privacy Act records.
1304.113 Privacy Act training.
1304.114 Responsibility for maintaining adequate safeguards.
1304.115 Systems of records covered by exemptions.
1304.116 Mailing lists.

Authority: 5 U.S.C. 552a(f).

Source: 56 FR 47144, Sept. 18, 1991, unless otherwise noted.

§ 1304.101 Purpose and Scope.

This part sets forth the policies and procedures of the U.S. Nuclear Waste Technical Review Board (Board) regarding access to systems of records maintained by the Board under the Privacy Act of 1974, Public Law 93–579, 5 U.S.C. 552a. The provisions in the Act shall take precedence over any part of the Board's regulations in conflict with the Act. These regulations establish procedures by which an individual may exercise the rights granted by the Privacy Act to determine whether a Board system contains a record pertaining to him or her; to gain access to such records; and to request correction or amendment of such records. These regulations also set identification requirements and prescribe fees to be charged for copying records.

§ 1304.102 Definitions.

The terms used in these regulations are defined in the Privacy Act of 1974, 5 U.S.C. 552a. In addition, as used in this part:

(a) *Agency* means any executive department, military department, government corporation, or other establishment in this executive branch of the Federal Government, including the Executive Office of the President or any independent regulatory agency;

(b) *Individual* means any citizen of the United States or an alien lawfully admitted for permanent residence;

(c) *Maintain* means to collect, use, store, or disseminate records as well as any combination of these recordkeeping functions. The term also includes exercise of control over, and therefore responsibility and accountability for, systems of records;

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Board and contains the individual's name or other identifying information, such as a number or symbol assigned to the individual or his or her fingerprint, voice print, or photograph. The term includes, but is not limited to, information regarding an individual's education, financial transactions, medical history, and criminal or employment history;

(e) *System of records* means a group of records under the control of the Board from which information is retrievable by use of the name of the individual or by some number, symbol, or other identifying particular assigned to the individual;

(f) *Routine use* means, with respect to the disclosure of a record, the use of a record for a purpose that is compatible with the purpose for which it was collected;

(g) *Designated Privacy Act Officer* means the person named by the board to administer the Board's activities in regard to the regulations in this part. The Privacy Act Officer also shall be the following:

(1) The Board officer having custody of, or responsibility for, agency records in the possession of the Board.

(2) The Board officer having responsibility for authorizing or denying production of records from requests filed under the Privacy Act.

(h) *Executive Director* means the chief operating officer of the Board;

(i) *Member* means an individual appointed to serve on the Board by the President of the United States;

(j) *Days* means standard working days, excluding weekends and federal holidays; and

(k) *Act* refers to the Privacy Act of 1974.

§ 1304.103 Privacy Act inquiries.

(a) *Requests regarding the contents of record systems.* Any person wanting to know whether the Board's systems of records contains a record pertaining to him or her may file a request in person or in writing, via the internet, or by telephone.

(b) *Requests in persons* may be submitted at the Board's headquarters located at 2300 Clarendon Blvd., Suite 1300; Arlington, VA. Requests should be marked ''Privacy Act Request'' on each page of the request and on the front of the envelope and directed to the Privacy Act Officer.

(c) *Requests in writing* may be sent to: Privacy Act Officer, U.S. Nuclear Waste Technical Review Board, 2300 Clarendon Blvd., Suite 1300, Arlington, VA 22201. ''Privacy Act Request'' should be written on the envelope and each page of the request.

(d) *Requests via the internet* may be made on the Board's Web site at *www.nwtrb.gov,* using the ''Contact NWTRB'' icon on the bottom of the Home page. The words ''Privacy Act'' should appear on the subject line.

(e) *Telephone requests* may be made by calling the Board's Privacy Act Officer at 703–235–4473.

§ 1304.104 Privacy Act records maintained by the Board.

(a) The Board shall maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by Executive Order of the President. In addition, the Board shall maintain all records that are used in making determinations about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to that individual in the making of any determination about him or her. However, the Board shall not be required to update retired records.

(b) The Board shall not maintain any record about any individual with respect to or describing how such individual exercises rights guaranteed by the First Amendment of the Constitution of the United States, unless expressly authorized by statute or by the subject individual, or unless pertinent to and within the scope of an authorized law enforcement activity.

§ 1304.105 Requests for access to records.

(a) All requests for records should include the following information:

(1) Full name, address, and telephone number of requester.

(2) The system of records containing the desired information.

(3) Any other information that the requester believes would help locate the record.

(b) *Requests in writing.* A person may request access to his or her own records in writing by addressing a letter to: Privacy Act Officer; U.S. Nuclear Waste Technical Review Board; 2300 Clarendon Blvd., Suite 1300; Arlington, VA 22201.

(c) *Requests via the internet.* Internet requests should be transmitted through the Board's Web site at *www.nwtrb.gov,* using the ''Contact NWTRB'' icon on the bottom of the main page. The words ''Privacy Act'' should appear on the subject line.

(d) *Requests in person.* Any person may examine and request copies of his or her own records on the Board's premises. The requester should contact the Board's offices at least one week before the desired appointment date. This request may be made to the Privacy Act Officer in writing, via the Internet, or by calling 703–235–4473.

(e) Before viewing the records, proof of identification, must be provided. The identification should be a valid copy of one of the following:

A government ID,

A driver's license,

A passport, or

Other current identification that contains both an address and a picture of the requester.

§ 1304.106 Processing of requests.

Upon receipt of a request for information, the Privacy Act Officer will ascertain:

Whether the records identified by the requester exist, and

Whether they are subject to any exemption under § 1304.115. If the records exist and are not subject to exemption, the Privacy Officer will provide the information.

(a) *Requests in writing, including those sent by e-mail, via the Web site, or by Fax.* Within five working days of receiving the requests the Privacy Act Officer will acknowledge its receipt and will advise the requester of any additional information that may be needed. Within 15 working days of receiving the request, the Privacy Act Officer will send the requested information or will explain to the requester why additional time is needed for a response.

(b) *Requests in person or by telephone.* Within 15 days of the initial request, the Privacy Act Officer will contact the requestor and arrange an appointment at a mutually agreeable time when the records can be examined. The requester may be accompanied by one person. The requestor should inform the Privacy Act Officer that a second individual will be present and must sign a statement authorizing disclosure of the records to that person. The statement will be kept with the requester's records. At the appointment, the requester will be asked to present identification as stated in § 1304.105.

(c) *Excluded information.* If a request is received for information compiled in reasonable anticipation of litigation, the Privacy Officer will inform the requester that the information is not subject to release under the Privacy Act (*see* 5 U.S.C. 552a(d)(5)).

§ 1304.107 Fees.

A fee will not be charged for searching, reviewing, or making corrections to records.

A fee for copying will be assessed at the same rate established for Freedom of Information Act requests. Duplication fees for paper copies of a record will be 10 cents per page for black and white and 20 cents per page for color. For all other forms of duplication, the Board will charge the direct costs of producing the copy. However, the first 100 pages of black-and-white copying or its equivalent will be free of charge.

§ 1304.108 Appealing denials of access.

If access to records is denied by the Privacy Act Officer, the requester may file an appeal in writing. The appeal should be directed to Executive Director; U.S. Technical Review Board; 2300 Clarendon Blvd., Suite 1300; Arlington, VA 22201. The appeal letter must:

Specify the denied records that are still sought; and

State why denial by the Privacy Act Officer is erroneous.

The Executive Director or his or her designee will respond to such appeals within 20 working days of the receipt of the appeal letter in the Board offices. The appeal determination will explain

the basis of the decision to deny or grant the appeal.

§ 1304.109 Requests for correction of records.

(a) *Correction requests.* Any person is entitled to request correction of his or her record(s) covered under the Act. The request must be made in writing and should be addressed to Privacy Act Officer; U.S. Nuclear Waste Technical Review Board; 2300 Clarendon Blvd., Suite 1300; Arlington, VA 22201. The letter should clearly identify the corrections desired. In most circumstances, an edited copy of the record will be acceptable for this purpose.

(b) *Initial response.* Receipt of a correction request will be acknowledged by the Privacy Act Officer in writing within 5 working days. The Privacy Act Officer will endeavor to provide a letter to the requester within 20 working days stating whether the request for correction has been granted or denied. If the Privacy Act Officer denies any part of the correction request, the reasons for the denial will be provided to the requester.

§ 1304.110 Disclosure of records to third parties.

(a) The Board will not disclose any record that is contained in a system of records to any person or agency, except with a written request by or with the prior written consent of the individual whose record is requested, unless disclosure of the record is:

(1) Required by an employee or agent of the Board in the performance of his/her official duties.

(2) Required under the provisions of the Freedom of Information Act (5 U.S.C. 552). Records required to be made available by the Freedom of Information Act will be released in response to a request in accordance with the Board's regulations published at 10 CFR part 1303.

(3) For a routine use as published in the annual notice in the **Federal Register**.

(4) To the Census Bureau for planning or carrying out a census, survey, or related activities pursuant to the provisions of Title 13 of the United States Code.

(5) To a recipient who has provided the Board with adequate advance written assurance that the record will be used solely as a statistical research or reporting record and that the record is to be transferred in a form that is not individually identifiable.

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Archivist of the United States, or his or her designee, to determine whether the record has such value.

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board for such records specifying the particular part desired and the law enforcement activity for which the record is sought. The Board also may disclose such a record to a law enforcement agency on its own initiative in situations in which criminal conduct is suspected, provided that such disclosure has been established as a routine use, or in situations in which the misconduct is directly related to the purpose for which the record is maintained.

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual.

(9) To either House of Congress, or, to the extent of matters within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any such joint committee.

(10) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of official duties of the Government Accountability Office.

(11) Pursuant to an order of a court of competent jurisdiction. In the event that any record is disclosed under such compulsory legal process, the Board shall make reasonable efforts to notify the subject individual after the process becomes a matter of public record.

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

(b) Before disseminating any record about any individual to any person other than a Board employee, the Board shall make reasonable efforts to ensure that the records are, or at the time they were collected were, accurate, complete, timely, and relevant. This paragraph (b) does not apply to disseminations made pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) and paragraph (a)(2) of this section.

§ 1304.111 Maintaining records of disclosures.

(a) The Board shall maintain a log containing the date, nature, and purpose of each disclosure of a record to any person or agency. Such accounting also shall contain the name and address of the person or agency to whom or to which each disclosure was made. This log will not include disclosures made to Board employees or agents in the course of their official duties or pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552).

(b) The Board shall retain the accounting of each disclosure for at least five years after the accounting is made or for the life of the record that was disclosed, whichever is longer.

(c) The Board shall make the accounting of disclosures of a record pertaining to an individual available to that individual at his or her request. Such a request should be made in accordance with the procedures set forth in § 1304.105. This paragraph (c) does not apply to disclosures made for law enforcement purposes under 5 U.S.C. 552a(b)(7) and § 1304.110(a)(7).

§ 1304.112 Notification of systems of Privacy Act records.

(a) *Public notice.* On November 22, 1996, the Board published a notice of its systems of records in the **Federal Register** (Vol. 61, Number 227, pages 59472–69473). It is updating and republishing the notice in this issue of the **Federal Register.** The Board periodically reviews its systems of records and will publish information about any significant additions or changes to those systems. Information about systems of records maintained by other agencies that are in the temporary custody of the Board will not be published. In addition, the Office of the Federal Register biennially compiles and publishes all systems of records maintained by all federal agencies, including the Board.

(b) At least 30 days before publishing additions or changes to the Board's systems of records, the Board will publish a notice of intent to amend, providing the public with an opportunity to comment on the proposed amendments to its systems of records.

§ 1304.113 Privacy Act training.

(a) The Board shall ensure that all persons involved in the design, development, operation, or maintenance of any Board systems are informed of all requirements necessary to protect the privacy of individuals. The Board shall ensure that all employees having access to records receive adequate training in their protection and that records have adequate and proper storage with sufficient security to ensure their privacy.

(b) All employees shall be informed of the civil remedies provided under 5 U.S.C. 552a(g)(1) and other implications of the Privacy Act and of the fact that the Board may be subject to civil remedies for failure to comply with the provisions of the Privacy Act and the regulations in this part.

§ 1304.114 Responsibility for maintaining adequate safeguards.

The Board has the responsibility for maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems. These security safeguards shall apply to all systems in which identified personal data are processed or maintained, including all reports and output from such systems that contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification, or destruction of any personal records or data; must minimize; to the extent practicable, the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data; and shall further ensure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) *Manual systems.* (1) Records contained in a system of records as defined in this part may be used, held, or stored only where facilities are adequate to prevent unauthorized access by persons within or outside the Board.

(2) Access to and use of a system of records shall be permitted only to persons whose duties require such access to the information for routine uses or for such other uses as may be provided in this part.

(3) Other than for access by employees or agents of the Board, access to records within a system of records shall be permitted only to the individual to whom the record pertains or upon his or her written request.

(4) The Board shall ensure that all persons whose duties require access to and use of records contained in a system of records are adequately trained to protect the security and privacy of such records.

(5) The disposal and destruction of identifiable personal data records shall be done by shredding and in accordance with rules promulgated by the Archivist of the United States.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored, or maintained by automated data systems only where facilities or conditions are adequate to prevent unauthorized access to such systems in any form.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times, including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be done by shredding, burning, or, in the case of electronic records, by degaussing or by overwriting with the appropriate security software, in accordance with regulations of the Archivist of the United States or other appropriate authority.

§ 1304.115 Systems of records covered by exemptions.

The Board currently has no exempt systems of records.

§ 1304.116 Mailing lists.

The Board shall not sell or rent an individual's name and/or address unless such action is specifically authorized by law. This section shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

Dated: February 23, 2007.

William D. Barnard,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 07–886 Filed 2–27–07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM355; Notice No. 25–346–SC]

Special Conditions: Dassault Aviation Model Falcon 7X Airplane; Interaction of Systems and Structures, Limit Pilot Forces, and High Intensity Radiated Fields (HIRF) Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Dassault Aviation Model Falcon 7X airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include interaction of systems and structures, limit pilot forces, and electrical and electronic flight control systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone (425) 227–1137; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2002, Dassault Aviation, 9 rond Point des Champs Elysées, 75008, Paris, France, applied for a type certificate for its new Model Falcon 7X airplane. The Model Falcon 7X is a 19 passenger transport category airplane, powered by three aft mounted Pratt & Whitney PW307A high bypass ratio turbofan engines. The airplane is operated using a fly-by-wire (FBW) primary flight control system. This will be the first application of a FBW primary flight control system in an airplane primarily intended for private/corporate use.

The Dassault Aviation Model Falcon 7X design incorporates equipment that was not envisioned when part 25 was created. This equipment affects the interaction of systems and structures, limit pilot forces, and high intensity radiated fields (HIRF) protection. Therefore, special conditions are required to provide the level of safety equivalent to that established by the regulations.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Dassault Aviation must show that the Model Falcon 7X airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–108.

If the Administrator finds that the applicable airworthiness regulations

(*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model Falcon 7X because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model Falcon 7X must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, are issued under § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Model Falcon 7X airplane will incorporate the following novel or unusual design features: interaction of systems and structures, limit pilot forces, and electrical and electronic flight control systems. These special conditions address equipment which may affect the airplane's structural performance, either directly or as a result of failure or malfunction; pilot limit forces; and electrical and electronic systems which perform critical functions that may be vulnerable to HIRF.

These special conditions are identical or nearly identical to those previously required for type certification of other Dassault airplane models. In general, the special conditions were derived initially from standardized requirements developed by the Aviation Rulemaking Advisory Committee (ARAC), comprised of representatives of the FAA, Europe's Joint Aviation Authorities (now replaced by the European Aviation Safety Agency), and industry.

Additional special conditions will be issued for other novel or unusual design features of the Dassault Model Falcon 7X airplane. These additional proposed special conditions will pertain to the following topics:

Dive Speed Definition With Speed Protection System, Sudden Engine Stoppage,
High Incidence Protection Function, Side Stick Controllers,
Lateral-Directional and Longitudinal Stability and Low Energy Awareness,
Flight Envelope Protection: General Limiting Requirements,
Flight Envelope Protection: Normal Load Factor (g) Limiting,
Flight Envelope Protection: Pitch, Roll and High Speed Limiting Functions,
Flight Control Surface Position Awareness,
Flight Characteristics Compliance via Handling Qualities Rating Method, and
Operation Without Normal Electrical Power.

Final special conditions have been issued for the Model Falcon 7X pertaining to Pilot Compartment View—Hydrophobic Coatings in Lieu of Windshield Wipers January 10, 2007 (72 FR 1135).

Discussion of Comments

Notice of proposed special conditions no. 26–06–10–SC for Dassault Aviation Model Falcon 7X airplanes was published in the **Federal Register** on October 18, 2006 (FR 71 61427). No comments were received, and the special conditions are adopted as proposed.

Discussion

Because of these rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. Therefore, in addition to the requirements of part 25, subparts C and D, the following three special conditions apply.

Special Condition No. 1. Interaction of Systems and Structures

The Dassault Model Falcon 7X is equipped with systems that may affect the airplane's structural performance either directly or as a result of failure or malfunction. The effects of these systems on structural performance must be considered in the certification analysis. This analysis must include consideration of normal operation and of failure conditions with required structural strength levels related to the probability of occurrence.

Previously, special conditions have been specified to require consideration of the effects of systems on structures. The special condition for the Model Falcon 7X is nearly identical to that issued for other fly-by-wire airplanes.

Special Condition No. 2. Limit Pilot Forces

Like some other certificated transport category airplane models, the Dassault Model Falcon 7X airplane is equipped with a side stick controller instead of a conventional wheel or control stick. This kind of controller is designed to be operated using only one hand. The requirement of § 25.397(c), which defines limit pilot forces and torques for conventional wheel or stick controls, is not appropriate for a side stick controller. Therefore, a special condition is necessary to specify the appropriate loading conditions for this kind of controller.

Special Condition No. 3. High Intensity Radiated Fields (HIRF) Protection

The Dassault Model Falcon X will utilize electrical and electronic systems which perform critical functions. These systems may be vulnerable to HIRF external to the airplane. There is no specific regulation that addresses requirements for protection of electrical and electronic systems from HIRF. With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, a special condition is needed for the Dassault Model Falcon 7X airplane. This special condition requires that avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, adequate protection from HIRF exists when there is compliance with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Dassault Model Falcon 7X. Should Dassault Aviation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the Dassault Model Falcon 7X airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Dassault Aviation Model Falcon 7X airplanes.

1. *Interaction of Systems and Structures.*

In addition to the requirements of part 25, subparts C and D, the following special conditions apply:

a. For airplanes equipped with systems that affect structural performance—either directly or as a result of a failure or malfunction—the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of part 25, subparts C and D. Paragraph c below must be used to evaluate the structural performance of airplanes equipped with these systems.

b. Unless shown to be extremely improbable, the airplane must be designed to withstand any forced structural vibration resulting from any failure, malfunction, or adverse condition in the flight control system. These loads must be treated in accordance with the requirements of paragraph a above.

c. Interaction of Systems and Structures.

(1) General: The following criteria must be used for showing compliance with this special condition for interaction of systems and structures and with § 25.629 for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, and fuel management systems. If this special condition is used for other systems, it may be necessary to adapt the criteria to the specific system.

(a) The criteria defined herein address only the direct structural consequences of the system responses and performances. They cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may, in some instances, duplicate standards already established for this evaluation. These criteria are applicable only to structures whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative modes are not provided in this special condition.

(b) Depending upon the specific characteristics of the airplane, additional studies may be required that go beyond the criteria provided in this special condition in order to demonstrate the capability of the airplane to meet other realistic conditions, such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

(c) The following definitions are applicable to this paragraph.

Structural performance: Capability of the airplane to meet the structural requirements of part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the flight manual (e.g., speed limitations and avoidance of severe weather conditions).

Operational limitations: Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (e.g., fuel, payload, and Master Minimum Equipment List limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, and extremely improbable) used in these special conditions are the same as those used in § 25.1309.

Failure condition: The term failure condition is the same as that used in § 25.1309. However, this special condition applies only to system failure conditions that affect the structural performance of the airplane (e.g., system failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins).

(2) Effects of Systems on Structures.

(a) *General.* The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

(b) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C (or used in lieu of those specified in subpart C), taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant non-linearity (rate of displacement of control surface, thresholds or any other system non-linearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of non-linearities must be investigated beyond limit conditions to ensure that the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered, when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

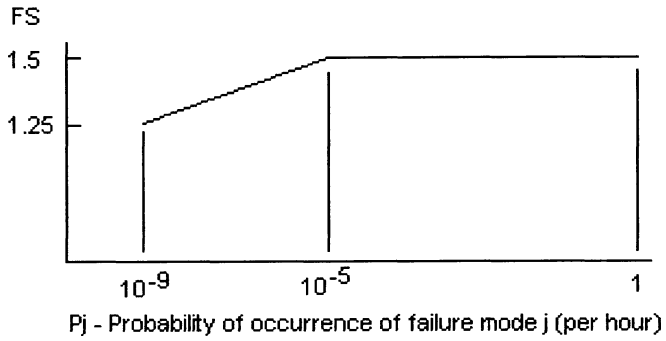
(c) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) At the time of occurrence. Starting from 1g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (FS) is defined in Figure 1.

Figure 1

Factor of safety at the time of occurrence



(ii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (c)(1)(i) of this section. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speed increases beyond V_C/ M_C, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) For the continuation of the flight. For the airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions (or used in lieu of the following conditions) at speeds up to V_C/M_C or the speed limitation prescribed for the remainder of the flight must be determined:

(A) The limit symmetrical maneuvering conditions specified in §§ 25.331 and in 25.345.

(B) The limit gust and turbulence conditions specified in §§ 25.341 and in 25.345.

(C) The limit rolling conditions specified in § 25.349 and the limit unsymmetrical conditions specified in §§ 25.367 and 25.427(b) and (c).

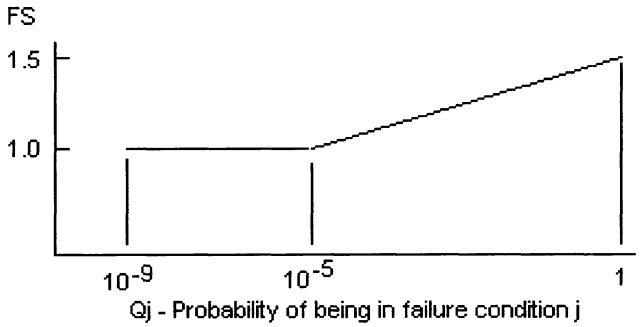
(D) The limit yaw maneuvering conditions specified in § 25.351.

(E) The limit ground loading conditions specified in §§ 25.473 and 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads in paragraph (c)(2)(i) of this special condition multiplied by a factor of safety, depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2

Factor of safety for continuation of flight



$Q_j = (T_j)(P_j)$

Where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in subpart C.

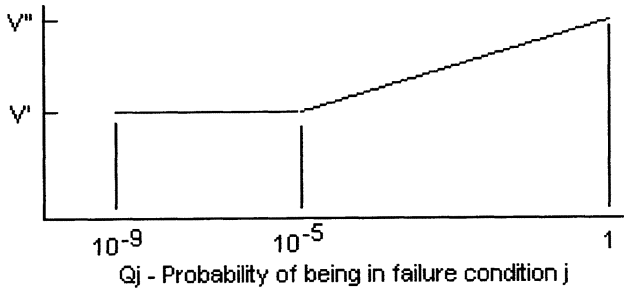
(iii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (c)(2)(ii). For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight, using the margins defined by § 25.629(b).

Figure 3

Clearance speed



V′ = Clearance speed as defined by § 25.629(b)(2).

V″ = Clearance speed as defined by § 25.629(b)(1).

$Q_j = (T_j)(P_j)$

Where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.

(vi) Freedom from aeroelastic instability must also be shown up to V′ in Figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of this Part, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(d) *Warning considerations.* For system failure detection and warning, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25 or significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks in lieu of warning systems to achieve the objective of this requirement. These certification maintenance requirements must be limited to components that are not readily detectable by normal warning

systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of part 25, subpart C, below 1.25 or flutter margins below V″ must be signaled to the crew during flight.

(e) *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance or affects the reliability of the remaining system to maintain structural performance, then the provisions of this special conditions must be met, including the provisions of paragraph (b), for the dispatched condition and paragraph (c) for subsequent failures. Expected operational limitations may be taken into account in establishing P_j as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Q_j as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed, if the subsequent system failure rate is greater than 1E–3 per flight hour.

2. *Limit Pilot Forces.* In addition to the requirements of § 25.397(c) the following special condition applies.

The limit pilot forces are:

a. For all components between and including the handle and its control stops.

Pitch	Roll
Nose up 200 lbf. (pounds force).	Nose left 100 lbf.
Nose down 200 lbf	Nose right 100 lbf.

b. For all other components of the side stick control assembly, but excluding the internal components of the electrical sensor assemblies to avoid damage as a result of an in-flight jam.

Pitch	Roll
Nose up 125 lbf	Nose left 50 lbf.
Nose down 125 lbf	Nose right 50 lbf.

3. *High Intensity Radiated Fields (HIRF) Protection.*

a. *Protection from Unwanted Effects of High Intensity Radiated Fields.* Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

b. *For the purposes of this special condition, the following definition applies: Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on February 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–3499 Filed 2–27–07; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Part 72

[Public Notice 5702]

RIN 1400–AC24

Deaths and Estates

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is issuing a final rule to update and amend its regulations on deaths and estates in 22 CFR Part 72, after review of one public comment received in response to the Department's October 24, 2006, issuance of a proposed rule. The existing regulations were originally issued in 1957. They needed to be redrafted in plain language and changed to reflect changes in State Department statutory authority and current practice. Sections 234 and 235 of the James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 made some changes to consular officer and State Department responsibilities with respect to the deaths and personal estates of United States citizens and non-citizen nationals abroad that must be reflected in the regulations.

DATES: This rule becomes effective on March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Edward A. Betancourt, Monica Gaw or Michael Meszaros, Overseas Citizens Services, Department of State, 2100 Pennsylvania Avenue, 4th Floor, Washington, DC 20037, 202–736–9110, fax number 202–736–9111. Hearing or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

Sections 234 and 235 of the James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (Pub. L. 106–113), (hereinafter ''the Act''), as codified in 22 U.S.C. 2715b and 2715c.

II. Introduction

The Department published a proposed rule, Public Notice 5582 at 71 FR 62219, on October 24, 2006, with a request for comments regarding the proposed changes in the Department's Death and Estate Regulations. This rule details the handling of deaths and estates of American citizens who die abroad. Legislation was passed in the year 2000 amending many of the statutes authorizing the State Department to perform this function. Many of the CFR provisions are unchanged since 1957. Some need revision because of the legislation; others are out of date.

This rule amends the existing regulations in 22 CFR Part 72 and implements sections 234 and 235 of the James W. Nancy and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (Pub. L. 106–113), (hereinafter ''the Act''), as codified in 22 U.S.C. sections 2715(b), 2715b, and 2715c. The current Part 72 will be removed in its entirety, and replaced with the proposed rules.

Notifications and Reports of Death

Section 234 of the Act provides an explicit statutory mandate, codified as 22 U.S.C. 2715b(a), to a consular officer to endeavor to notify, or assist the Secretary of State in notifying, the next of kin or legal guardian as soon as possible when a United States citizen or non-citizen national dies abroad, with certain exceptions. 22 U.S.C. 2715b(a) essentially codifies existing practices concerning consular reporting and notification regarding deaths of United States citizens or non-citizen nationals as reflected in the existing 22 CFR 72.1 through 72.8, with some variations in the exceptions to normal notification procedures. 22 U.S.C. 4196, which provides for the consular officer to

notify the legal representative and the Secretary of State of the death of a United States citizen or national abroad, is unaffected by Section 234.

Under the amended regulations, when notifying next of kin of the death of a United States citizen or non-citizen national abroad, such notifications will be made by telephone and confirmed in writing, for example, through an e-mail or fax. The State Department previously used a commercial telegram service to make such notifications.

Section 234 of the Act also explicitly authorizes a consular officer to issue a report of death or of presumptive death in the case of a finding of death by the appropriate local authorities. In addition, it explicitly authorizes a consular officer to issue a report of presumptive death in the absence of a finding of death by the appropriate local authorities. This latter provision is intended to allow the consular officer to issue a report of presumptive death in exceptional circumstances where the evidence that the individual has died (*e.g.*, he or she was listed as a passenger on an aircraft that crashed leaving no survivors) is persuasive, but local authorities have not issued and are not likely to issue a finding of death (because *e.g.*, issuance of a local death certificate requires forensic evidence that is not available or there is no local authority that clearly has jurisdiction.) The Section 234 authorities to issue reports of death are codified at 22 U.S.C. 2715b(b).

Protection of Estates

Section 234 of the Act further preserves and updates the authority of a consular officer to serve as provisional conservator of the portion of the personal estate of a deceased United States citizen or non-citizen national that is located abroad. It also preserves and updates the authority of a consular officer in ''exceptional circumstances'' to serve as the administrator of the estate. This authority is now codified at 22 U.S.C. 2715c. (The predecessor statute, 22 U.S.C. 4195, was repealed by Section 234.)

Pursuant to 22 U.S.C. 2715c, a consular officer may serve as provisional conservator or administrator of the personal estate of a United States citizen or non-citizen national only when this is authorized by treaty provisions, permitted by the laws and authorities of the foreign country where the death occurs, or the decedent is domiciled, or permitted by established usage in that foreign country. Serving as a provisional conservator or administrator with respect to the personal estate of a deceased United States citizen or non-citizen national is, however, not authorized if the decedent has left or there is otherwise appointed in the foreign country where the death occurred or where the decedent was domiciled, a legal representative, partner in trade, or trustee appointed to take care of the personal estate. If such a legal representative, partner in trade or trustee appears at any time prior to the transmission of the property to the Secretary of State and demands the proceeds and effects held by the consular officer, the consular officer must deliver them after collecting any fees prescribed for the services performed under 22 U.S.C. 2715c. Consistent with previous statutory authority, 22 U.S.C. 2715c(a)(1) confirms that a consular officer, when serving as provisional conservator of an estate may (A) take possession of the personal effects of the decedent within the consular officer's jurisdiction, (B) inventory and appraise the personal effects, (C) when appropriate in the exercise of prudent administration, collect the debts due to the decedent in the officer's jurisdiction and pay from the estate obligations owed by the decedent, (D) sell or otherwise dispose of, as appropriate, in the exercise of prudent administration, all perishable items of property, (E) sell, after reasonable public notice and notice to such next of kin as can be ascertained with reasonable diligence, additional items of property as necessary to provide funds for the decedent's debts, local property taxes, funeral expenses and other expenses incident to the disposition of the estate; and (F) if no claimant has appeared within the one year period beginning on the date of death (or such reasonable additional period as may be required for final settlement of the estate), sell the residue of the personal estate in the same manner as United States Government-owned foreign excess property, after reasonable public notice and notice to such next of kin as can be ascertained with reasonable diligence.

Transmittal of Estates to Department of State

Prior to enactment of the Legislative Appropriations Act of 1996 (Pub. L. 104–53), the General Accounting Office (GAO) (now the Government Accountability Office) had responsibility for receiving the final statement of account and the personal effects of deceased United States citizens and non-citizen nationals that had been held by consular officers for over one year. Pub. L. 104–53 divested GAO of some of its ''operational responsibilities,'' including accepting the personal estates of United States citizens and non-citizen nationals who die abroad, and gave such responsibilities to the Executive Branch. Pursuant to Section 234 of the Act, the Department of State now has explicit responsibility for estates formerly transmitted to the GAO. 22 U.S.C. 2715c(a)(1)(G) provides that any proceeds from sale of the residue of the estate shall be transmitted to the Secretary of State, who will have the authority to seek payment of debts to the estate and may take other action that is reasonably necessary for the conservation of the estate. 22 U.S.C. 2715c(b)(1) conveys title of the residue of the estate to the United States if no legal claimant appears within five fiscal years beginning on October 1 after the date on which a consular officer took possession of the personal estate, and gives the Secretary of State the authority to dispose of the estate as surplus United States Government-owned property or such other means as may be appropriate in light of the nature and value of the property involved. The net cash estate after disposition goes to the miscellaneous receipts account of the Treasury.

Conveyance of Real Property to United States Government

Another new statutory authority conferred by Section 234 of the Act, and codified in 22 U.S.C. 2715c(a)(1)(H) and 22 U.S.C. 2715c(b)(2), addresses the situation where real property belonging to a deceased United States citizen or non-citizen national lays dormant for lack of a claimant while taxes and other assessments accrue, with the possibility, therefore, that ownership of the property will be transferred to a foreign government authority. In that situation, if local law so provides, the consular officer may provide for title to the property to be conveyed to the United States Government unless the Secretary of State declines to accept the conveyance. Real property conveyed to the Secretary of State may be treated as foreign excess property, or, if the Department of State wants the property for its own use, may be treated as an unconditional gift.

Compensation for Loss, Theft or Destruction

Finally, Section 234 of the Act provides a new authority, codified in 22 U.S.C. 2715c(c), for the Secretary of State to compensate the estate of any United States citizen or non-citizen national who has died overseas for property that was lost, stolen or destroyed while in the custody of officers or employees of the State

Department and with respect to which a consular officer was exercising the role of provisional conservator pursuant to 22 U.S.C. 2715 (relating to major disasters and incidents abroad affecting United States citizens) or 22 U.S.C. 2715c(a). Any compensation provided under this provision is in lieu of personal liability of the State Department's officers and employees. State Department officers and employees may be liable to the State Department for any such compensation provided, however, and liability determinations are to be made pursuant to the State Department's procedures for determining accountability for United States Government property. The proposed regulations provide procedures for an estate to claim compensation by reference to Department of State regulations on overseas tort claims under 22 U.S.C. 2669(f).

Existing statutory provisions, 22 U.S.C. 4197 and 22 U.S.C. 4198, prescribe the posting of bond by a consular officer who is appointed by a foreign state as an administrator, guardian or other office of trust for an estate and providing penalties for failure to post bond or for embezzlement, remain in force.

Broader Definition of ''Consular Officer''

Section 235 of the Act amended 22 U.S.C. 2715 (Procedures regarding major disasters and incidents abroad affecting United States citizens) by, inter alia, defining ''consular officer'' for the purpose of 22 U.S.C. 2715 and Section 234 of the Act to include any United States citizen employee of the Department of State who is designated by the Secretary of State to perform consular services pursuant to such regulations as the Secretary may prescribe. Accordingly, such designated United States citizen employees now may make notifications of deaths, issue reports of death and presumptive death, and act as provisional conservators of estates.

Analysis of Comments

As stated above, the proposed rule was published on October 24, 2006. The Department received one comment regarding the proposed rule. There were no comments that objected to the proposed changes or the substance of the changes.

The one comment received was intended to improve the language of the proposed rule by making the rule more easily understood. The commenter suggested that Section 72.2 should not begin with an exception and stated that section would read clear if the exception were placed at the end of the rule. The comment is well taken and we have adopted this suggestion, along with additional suggestions by the commenter to make the rule clearer and the language less bureaucratic.

III. Regulatory Findings

Administrative Procedure Act

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by Federal agencies that affect the public (5 U.S.C. 533), the State Department is publishing this proposed rule and inviting public comment. All comments received before the close of business on the comment closing date indicated above will be considered.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act 5 U.S.C. 605(b), the Department of State has evaluated the effects of this proposed action on small entities, and has determined, and hereby certifies, pursuant to 5 U.S.C. 605(b), that it would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804 for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement, including cost-benefit and other analyses, before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Moreover, because this rule will not significantly or uniquely affect small governments, section 203 of the UFMA, 2 U.S.C. 1533, does not require preparation of a small government agency plan in connection with it.

Executive Order 13132: Federalism

A rule has federalism implications under Executive Order 13132 if it has 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. This regulation will not have such effects, and therefore does not have sufficient federalism implications to require consultations or to warrant the preparation of a federalism summary impact statement under section 6 of Executive Order 13132.

Executive Order 12866: Regulatory Review

The Department of State does not consider this rule to be a ''significant regulatory action'' within the scope of section 3(f)(1) of Executive Order 12866. Nonetheless, the State Department has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

Executive Order 12988: Civil Justice Reform

The State Department has reviewed this rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden. The State Department has made every reasonable effort to ensure compliance with the requirements in Executive Order 12988.

Paperwork Reduction Act of 1995

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 72

Estates.

■ For reasons set forth in the preamble, Title 22, Chapter I, Subchapter H, part 72 of the Code of Federal Regulations is revised to read as follows:

PART 72—DEATHS AND ESTATES

Reporting Deaths of United States Nationals

Sec.

72.1 Definitions.
72.2 Consular responsibility.
72.3 Exceptions.
72.4 Notifications of death.
72.5 Final report of death.
72.6 Report of presumptive death.

Disposition of Remains

72.7 Consular responsibility.

Personal Estates of Deceased United States Citizens and Nationals.

72.8 Regulatory responsibility of consular officer.
72.9 Responsibility if legal representative is present.
72.10 Responsibility if a will intended to operate locally exists.
72.11 Responsibility if a will intended to operate in the United States exists.
72.12 Bank deposits in foreign countries.
72.13 Effects to be taken into physical possession.
72.14 Nominal possession; property not normally taken into physical possession.
72.15 Action when possession is impractical.
72.16 Procedure for inventorying and appraising effects.
72.17 Final statement of account.
72.18 Payment of debts owed by decedent.
72.19 Consular officer ordinarily not to act as administrator of estate.
72.20 Prohibition against performing legal services or employing counsel.
72.21 Consular officer not to assume financial responsibility for the estate.
72.22 Release of personal estate to legal representative.
72.23 Affidavit of next of kin.
72.24 Conflicting claims.
72.25 Transfer of personal estate to Department of State.
72.26 Vesting of personal estate in United States.
72.27 Export of cultural property; handling other property when export, possession, or import may be illegal.
72.28 Claims for lost, stolen, or destroyed personal estate.

Real Property Overseas Belonging to a Deceased United States Citizen or National.

72.29 Real property overseas belonging to deceased United States citizen or national.
72.30 Provisions in a will or advanced directive regarding disposition of remains.

Fees

72.31 Fees for consular death and estate services.

Authority: 22 U.S.C. 2715, 2715b, 2715c, 4196, 4197, 4198, 4199.

Reporting Deaths of United States Nationals

§ 72.1 Definitions.

For purposes of this part:

(a) *Consular officer* includes any United States citizen employee of the Department of State who is designated by the Department of State to perform consular services relating to the deaths and estates abroad of United States nationals.

(b) *Legal representative* means—

(1) An executor designated by will intended to operate in the country where the death occurred or in the country where the deceased was residing at the time of death to take possession and dispose of the decedent's personal estate;

(2) An administrator appointed by a court of law in intestate proceedings in the country where the death occurred or in the country where the deceased was residing at the time of death to take possession and dispose of the decedent's personal estate;

(3) The next of kin, if authorized in the country where the death occurred or in the country where the deceased was residing at the time of death to take possession and dispose of the decedent's personal estate; or

(4) An authorized agent of the individuals described in paragraphs (b)(1), (b)(2) and (b)(3) of this section.

(c) *Department* means the United States Department of State

§ 72.2 Consular responsibility.

When a consular officer learns that a United States citizen or non-citizen national has died in the officer's consular district, the officer must—

(a) Report the death to the Department; and

(b) The officer must also try to notify, or assist the Secretary of State in notifying, the next of kin (or legal guardian) and the legal representative, if different from the next of kin, as soon as possible. See § 72.3 for exceptions to this paragraph.

§ 72.3 Exceptions.

If a consular office learns that a United States citizen or non-citizen national employee or dependent of an employee of a member of the United States Armed Forces, or a United States citizen or non-citizen national employee of another department or agency or a dependent of such an employee, or a Peace Corps volunteer as defined in 22 U.S.C. 1504(a) or dependent of a Peace Corps volunteer has died while in the officer's consular district while the employee or volunteer is on assignment abroad, the officer should notify the Department. The consular officer should not attempt to notify the next of kin (or legal guardian) and legal representative of the death, but rather should assist, as needed, the appropriate military, other department of agency or Peace Corps authorities in making notifications of death with respect to such individual.

§ 72.4 Notifications of death.

The consular officer should make best efforts to notify the next of kin (or legal guardian), if any, and the legal representative (if any, and if different from the next of kin), of the death of a United States citizen or non-citizen national by telephone as soon as possible, and then should follow up with a written notification of death.

§ 72.5 Final report of death.

(a) *Preparation.* Except in the case of the death of an active duty member of the United States Armed Forces, when there is a local death certificate or finding of death by a competent local authority, the consular officer should prepare a consular report of death (''CROD'') on the form prescribed by the Department. The CROD will list the cause of death that is specified on the local death certificate or finding of death. The consular officer must prepare an original Report of Death, which will be filed with the Vital Records Section of Passport Services at the Department of State. The consular officer will provide a certified copy of the Report of Death to the next of kin or other person with a valid need for the Report within six months of the time of death. The next of kin or other person with a valid need for the Report may obtain additional certified copies after six months by contacting the Department of State, Vital Records, Passport Services, 1111 19th St., NW., Rm. 510, Washington, DC 20036.

(b) *Provision to Department.* The consular officer must sent the original of the CROD to the Department, with one additional copy for each agency concerned, if the deceased was:

(1) A recipient of continuing payments other than salary from the Federal Government; or

(2) An officer or employee of the Federal Government (other than a member of the United States Armed Services); or

(3) A Selective Service registrant of inductable age.

(c) *Provision to next of kin/legal representative.* The consular officer must provide a copy of the CROD to the next of kin (or legal guardian) or to each of the next of kin, in the event there is more than one (e.g. more than one surviving child) and to any known legal representative who is not the next of kin.

(d) *Transmission of form to other consular districts.* If the consular officer knows that a part of the personal estate of the deceased is in a consular district other than that in which the death occurred, the officer should send a copy of the CROD to the consular officer in the other district.

(e) The Department may revoke a CROD if it determines in its sole discretion that the CROD was issued in error.

§ 72.6 Report of presumptive death.

(a) *Local finding.* When there is a local finding of presumptive death by a competent local authority, a consular officer should prepare a consular report of presumptive death on the form prescribed by the Department.

(b) *No local finding.* (1) A United States citizen or non-citizen national may disappear or be missing in circumstances where it appears likely that the individual has died, but there is no local authority able or willing to issue a death certificate or a judicial finding of death. This may include, for example, death in a plane crash where there are no identifiable remains, death in a plane crash beyond the territory of any country, death in an avalanche, disappearance/death at sea, or other sudden disaster where the body is not immediately (or perhaps ever) recoverable.

(2) *Authorization of issuance.* The Department may authorize the issuance of a consular report of presumptive death in such circumstances. A consular report of presumptive death may not be issued without the Department's authorization.

(3) *Considerations in determining whether the Department will authorize issuance of a Report of Presumptive Death.* The Department's decision whether to issue a Report of Presumptive Death is discretionary, and will be based on the totality of circumstances in each particular case. Although no one factor is conclusive or determinative, the Department will consider the factors cited below, among other relevant considerations, when deciding whether to authorize issuance in a particular case:

(i) Whether the death is believed to have occurred within a geographic area where no sovereign government exercises jurisdiction;

(ii) Whether the government exercising jurisdiction over the place where the death is believed to have occurred lacks laws or procedures for making findings of presumptive death;

(iii) Whether the government exercising jurisdiction over the place where the death is believed to have occurred requires a waiting period exceeding five years before findings of presumptive death may be made;

(iv) Whether the person who is believed to have died was seen to be in imminent peril by credible witnesses;

(v) Whether the person who is believed to have died is reliably known to have been in a place which experienced a natural disaster, or catastrophic event, that was capable of causing death;

(vi) Whether the person believed to have died was listed on the certified manifest of, and was confirmed to have boarded, an aircraft, or vessel, which was destroyed and, despite diligent search by competent authorities, some or all of the remains were not recovered or could not be identified;

(vii) Whether there is evidence of fraud, deception, or malicious intent.

(c) Consular reports of presumptive death should be processed and issued in accordance with § 72.5.

(d) The Department may revoke a report of presumptive death if it determines in its sole discretion that the report was issued in error.

Disposition of Remains

§ 72.7 Consular responsibility.

(a) A consular officer has no authority to create Department or personal financial obligations in connection with the disposition of the remains of a United States citizen or non-citizen national who dies abroad. Responsibility for the disposition of the remains and all related costs (including but not limited to costs of embalming or cremation, burial expenses, cost of a burial plot or receptacle for ashes, markers, and grave upkeep), rests with the legal representative of the deceased. In the absence of a legal representative (including when the next of kin is not a legal representative), the consular officer should ask the next of kin to provide funds and instructions for disposition of remains. If the consular officer cannot locate a legal representative or next of kin, the consular officer may ask friends or other interested parties to provide the funds and instructions.

(b) Arrangements for the disposition of remains must be consistent with the law and regulations of the host country and any relevant United States laws and regulations. Local law may, for example, require an autopsy, forbid cremation, require burial within a certain period of time, or specify who has the legal authority to make arrangements for the disposition of remains.

(c) If funds are not available for the disposition of the remains within the period provided by local law for the interment or preservation of dead bodies, the remains must be disposed of by the local authorities in accordance with local law or regulations.

Personal Estates of Deceased United States Citizens and Nationals

§ 72.8 Regulatory responsibility of consular officer.

(a) A consular officer should act as provisional conservator of the personal estate of a United States citizen or non-citizen national who dies abroad in accordance with, and subject to, the provisions of §§ 72.9 through 72.27. The consular officer may act as provisional conservator only with respect to the portion of the personal estate located within the consular officer's district.

(b) A consular officer may act as provisional conservator only to the extent that doing so is:

(1) Authorized by treaty provisions;

(2) Not prohibited by the laws or authorities of the country where the personal estate is located; or

(3) Permitted by established usage in that country.

§ 72.9 Responsibility if legal representative is present.

(a) A consular officer should not act as provisional conservator if the consular officer knows that a legal representative is present in the foreign country.

(b) If the consular officer learns that a legal representative is present after the consular officer has taken possession and/or disposed of the personal estate but prior to transmission of the proceeds and effects to the Secretary of State pursuant to § 72.25, the consular officer should follow the procedures specified in § 72.22.

§ 72.10 Responsibility if a will intended to operate locally exists.

(a) If a will that is intended to operate in the foreign country is discovered and the legal representative named in the will qualifies promptly and takes charge of the personal estate in the foreign country, the consular officer should assume no responsibility for the estate, and should not take possession, inventory and dispose of the personal property and effects or in any way serve as agent for the legal representative.

(b) If the legal representative does not qualify promptly and if the laws of the country where the personal estate is located permit, however, the consular officer should take appropriate protective measures such as—

(1) Requesting local authorities to provide protection for the property under local procedures; and/or

(2) Placing the consular officer's seal on the personal property of the decedent, such seal to be broken or removed only at the request of the legal representative.

(c) If prolonged delays are encountered by the local or domiciliary legal representative in qualifying and/or making arrangements to take charge of the personal estate, the consular officer should consult the Department concerning whether the will should be offered for probate.

§ 72.11 Responsibility if a will intended to operate in the United States exists.

The consular officer immediately should forward any will that is intended to operate in the United States and that is among the effects taken into possession to the person or persons designated as executor(s). When the executor(s) cannot be located, the consular officer should send the will to the appropriate court in the State of the decedent's domicile. Until the consular officer knows that a legal representative is present in the foreign country and has qualified or made arrangements to take charge of the personal estate, the consular officer should act as provisional conservator in accordance with § 72.8.

§ 72.12 Bank deposits in foreign countries.

(a) A consular officer is not authorized to withdraw or otherwise dispose of bank accounts and other assets deposited in financial institutions left by a deceased United States citizen or non-citizen national in a foreign country. Such deposits or other assets are not considered part of the personal estate of a decedent.

(b) The consular officer should report the existence of bank accounts and other assets deposited in financial institutions of which the officer becomes aware to the legal representative, if any. The consular officer should inform the legal representative of the procedures required by local law and the financial institution to withdraw such deposits, and should provide a list of local attorneys in the event counsel is necessary to assist in withdrawing the funds.

(c) A consular officer must not under any circumstances withdraw funds left by a deceased United States citizen or non-citizen national in a bank or financial institution in a foreign country without express approval and specific instructions from the Department.

§ 72.13 Effects to be taken into physical possession.

(a) A consular officer normally should take physical possession of articles such as the following:

(1) Convertibles assets, such as currency, unused transportation tickets, negotiable evidence of debts due and payable in the consular district, and any other instruments that are negotiable by the consular officer;

(2) Luggage;

(3) Wearing apparel;

(4) Jewelry, heirlooms, and articles generally by sentimental value (such as family photographs);

(5) Non-negotiable instruments, which include any document or instrument not negotiable by the consular officer because it requires either the signatures of the decedent or action by, or endorsement of, the decedent's legal representative. Nonnegotiable instruments include, but are not limited to, transportation tickets not redeemable by the consular officer, traveler's checks, promissory notes, stocks, bonds or similar instruments, bank books, and books showing deposits in building and loan associations, and

(6) Personal documents and papers.

(b) All articles taken into physical possession by a consular officer should be kept in a locked storage area on post premises. If access to storage facilities on the post premises cannot be adequately restricted, the consular officer may explore the possibility of renting a safe deposit box if there are funds available in the estate or from other sources (such as the next of kin).

§ 72.14 Nominal possession; property not normally taken into physical possession.

(a) When a consular officer take articles of a decedent's personal property from a foreign official or other persons for the explicit purpose of immediate release to the legal representative such acton is not a taking of physical possession by the officer. Before releasing the property, the consular officer must require the legal representative to provide a release on the form prescribed by the Department discharging the consular officer of any responsibility for the articles transferred.

(b) A consular officer is not normally expected to take physical possession of items of personal property such as:

(1) Items of personal property found in residences and places of storage such as furniture, household effects and furnishings, works of art, and book and wine collections, unless such items are of such nature and quantity that they can readily be taken into physical possession with the rest of the personal effects;

(2) Motor vehicles, airplanes or watercraft;

(3) Toiletries, such as toothpaste or razors;

(4) Perishable items.

(c) The consular officer should in his or her discretion take appropriate steps permitted under the laws of the country where the personal property is located to safeguard property in the personal estate that is not taken into the officer's physical possession including such actions as:

(1) Placing the consular officer's seal on the premises or on the property (whichever is appropriate);

(2) Placing such property in safe storage such as a bonded warehouse, if the personal estate contains sufficient funds to cover the costs of such safekeeping; and/or

(3) If property that normally would be sealed by the consular officer is not immediately accessible, requesting local authorities to seal the premises or the property or otherwise ensure that the property remains intact until consular seals can be placed thereon, the property can be placed in safe storage, or the legal representative can assume responsibility for the property.

(d) the consular officer may decide in his or her discretion to discard toiletries and perishable items.

§ 72.15 Action when possession is impractical.

(a) A consular officer should not take physical possession of the personal estate of a deceased United States citizen or non-citizen national in his or her consular district when the consular officer determines in his or her discretion that it would be impractical to do so.

(b) In such cases, the consular officer must take action that he or she determines in his or her discretion would be appropriate to protect t the personal estate such as:

(1) Requesting the persons, officials or organizations having custody of the personal estate to ship the property to the consular officer, if the personal estate contains sufficient funds to cover the costs of such shipment; or

(2) Requesting local authorities to safeguard the property until a legal representative can take physical possession.

§ 72.16 Procedure for inventorying and appraising effects.

(a) After taking physical possession of the personal estate of a deceased United States citizen or non-citizen national, the consular officer should promptly inventory the personal effects.

(b) If the personal estate taken into physical possession includes apparently valuable items, the consular officer may, in his or her discretion, seek a professional appraisal for such items, but only to the extent that there are funds available in the estate or from other sources (such as the next of kin) to cover the cost of appraisal.

(c) The consular officer must also prepare a list of articles not taken into physical possession, with an indication of any measures taken by the consular office to safeguard such items for submission with the inventory of effects.

§ 72.17 Final statement of account.

The consular officer may have to account directly to the parties in interest and to the courts of law in estate matters. Consequently, the officer must keep an account of receipts and expenditures for the personal estate of the deceased, and must prepare a final statement of account when turning over the estate to the legal representative, a claimant, or the Department.

§ 72.18 Payment of debts owed by decedent.

The consular officer may pay debts of the decedent which the consular officer believes in his or her discretion are legitimately owed in the country in which the death occurred, or in the country in which the decedent was residing at the time of death, including expenses incident to the disposition of the remains and the personal effects, out of the convertible assets of the personal estate taken into possession by the consular officer.

§ 72.19 Consular officer is ordinarily not to act as administrator of estate.

(a) A consular officer is not authorized to accept appointment from any foreign state or from a court in the United States and/or to act as administrator or to assist (except as provided in §§ 72.8 to 72.30) in administration of the personal estate of a United States citizen or non-citizen national who has died, or was residing at the time of death, in his or her consular district, unless the Department has expressly authorized the appointment. The Department will authorize such an appointment only in exceptional circumstances and will require the consular officer to execute bond consistent with 22 U.S.C. 4198 and 4199.

(b) The Department will not authorize a consular officer to serve as an administrator unless:

(1) Exercise of such responsibilities is:

(i) Authorized by treaty provisions or permitted by the laws or authorities of the country where the United States citizen or national died or was domiciled at the time of death; or

(ii) Permitted by established usage in that country; and

(2) The decedent does not have a legal representative in the consular district.

§ 72.20 Prohibition against performing legal services or employing counsel.

A consular officer may not act as an attorney or agent for the estate of a deceased United States citizen or non-citizen national overseas or employ counsel at the expense of the United States Government in taking possession and disposing of the personal estate of a United States citizen or non-citizen national who dies abroad, unless specifically authorized in writing by the Department. If the legal representative or other interested person wishes to obtain legal counsel, the consular officer may furnish a list of attorneys.

§ 72.21 Consular officer may not assume financial responsibility for the estate.

A consular officer is not authorized to assume any financial responsibility or to incur any expense on behalf of the United States Government in collecting and disposing of the personal estate of a United States citizen or national who dies abroad.

A consular officer may incur expenses on behalf of the estate only to the extent that there are funds available in the estate or from other sources (such as the next of kin).

§ 72.22 Release of personal estate to legal representative.

(a) If a person or entity claiming to be a legal representative comes forward at any time prior to transmission of the decedent's personal estate to the Secretary of State under 22 CFR 72.25, the consular officer may release the personal estate in his or her custody to the legal representative provided that:

(1) The legal representative presents satisfactory evidence of the legal representative's right to receive the estate;

(2) The legal representative pays any fees prescribed for consular services provided in connection with the disposition of remains or protection of the estate (see 22 CFR 22.1);

(3) The legal representative executes a release in the form prescribed by the Department; and

(4) The Department approves the release of the personal estate.

(b) Satisfactory evidence of the right to receive the estate may include:

(1) In the case of an executor, a certified copy of letters testamentary or other evidence of legal capacity to act as executor;

(2) In the case of an administrator, a certified copy of letters of administration or other evidence of legal capacity to act as administrator;

(3) In the case of the agent of an executor or administrator, a power of attorney or other document evidencing agency (in addition to evidence of the executor's or administrator's legal capacity to act).

§ 72.23 Affidavit of next of kin.

If the United States citizen or non-citizen national who has died abroad did not leave a will that applies locally, and the personal estate in the consular district consists only of clothing and other personal effects that the consular officer concludes in his or her discretion is worth less than $2000 and/or cash of a value equal to or less than $2000, the consular officer may decide in his or her discretion to accept an affidavit from the decedent's next of kin as satisfactory evidence of the next of kin's right to take possession of the personal estate. The Department must approve any release based on an affidavit of next of kin where the consular officer concludes that the personal estate effects are worth more than $2000 and/or the cash involved is of a value more than $2000 and generally will consider approving such releases only in cases where state law prohibits the appointment of executors or administrators for estates that are valued at less than a specified amount and the law of the foreign country where the personal property is located would not prohibit such a release.

§ 72.24 Conflicting claims.

Neither the consular officer nor the Department of State has the authority or responsibility to mediate or determine the validity or order of contending claims to the personal estate of a deceased United States citizen or non-citizen national. If rival claimants, executors or administrators demand the personal estate in the consular officer's possession, the officer should not release the estate to any claimant until a legally binding agreement in writing has been reached or until the dispute is settled by a court of competent jurisdiction, and/or the Department has approved the release.

§ 72.25 Transfer of personal estate to Department of State.

(a) If no claimant with a legal right to the personal estate comes forward, or if conflicting claims are not resolved, within one year of the date of death, the consular officer should sell or dispose of the personal estate (except for financial instruments, jewelry, heirlooms, and other articles of obvious sentimental value) in the same manner as United States Government-owned foreign excess property under Title IV of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 511 *et seq.*). If, however, a reasonable amount of additional time is likely to permit final settlement of the estate, the consular officer may in his or her discretion postpone the sale for that period of additional time.

(b) The consular officer should send to the custody of the Department the proceeds of any sale, together with all

financial instruments (including bonds, shares of stock and notes of indebtedness), jewelry, heirlooms and other articles of obvious sentimental value, to be held in trust for the legal claimant(s).

(c) After receipt of a personal estate, the Department may seek payment of all outstanding debts to the estate as they become due, may receive any balances due on such estate, may endorse all checks, bills of exchange, promissory notes, and other instruments of indebtedness payable to the estate for the benefit thereof, and may take such other action as is reasonably necessary for the conservation of the estate.

§ 72.26 Vesting of personal estate in United States.

(a) If no claimant with a legal right to the personal estate comes forward within the period of five fiscal years beginning on October 1 after the consular officer took possession of the personal estate, title to the personal estate shall be conveyed to the United States, the property in the estate shall be under the custody of the Department, and the Department may dispose of the estate under as if it were surplus United States Government-owned property under title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 4811 *et seq.* or by such means as may be appropriate as determined by Department in its discretion in light of the nature and value of the property involved. The expenses of sales shall be paid from the estate, and any lawful claim received thereafter shall be payable to the extent of the value of the net proceeds of the estate as a refund from the appropriate Treasury appropriations account.

(b) The net cash estate shall be transferred to the miscellaneous receipts account of the Treasury of the United States.

§ 72.27 Export of cultural property; handling other property when export, possession, or import may be illegal.

(a) A consular officer should not ship, or assist in the shipping, of any archeological, ethnological, or cultural property, as defined in 19 U.S.C. 2601, that the consular officer is aware is part of the personal estate of a United States citizen or non-citizen national to the United States in order to avoid conflict with laws prohibiting or conditioning such export.

(b) A consular officer may refuse to ship, or assist in the shipping, of any property that is part of the personal estate of a United States citizen or non-citizen national if the consular officer has reason to believe that possession or shipment of the property would be illegal.

§ 72.28 Claims for lost, stolen, or destroyed personal estate.

(a) The legal representative of the estate of a decreased United States citizen or national may submit a claim to the Secretary of State for any personal property of the estate with respect to which a consular officer acted as provisional conservator, and that was lost, stolen, or destroyed while in the custody of officers or employees of the Department of State. Any such claim should be submitted to the Office of Legal Adviser, Department of State, in the manner prescribed by 28 CFR part 14 and will be processed in the same manner as claims made pursuant to 22 U.S.C. 2669–1 and 2669 (f).

(b) Any compensation paid to the estate shall be in lieu of the personal liability of officers or employees of the Department to the estate.

(c) The Department nonetheless may hold an officer or employee of the Department liability to the Department to the extent of any compensation provided to the estate. The liability of the officer or employee shall be determined pursuant to the Department's procedures for determining accountability for United States government property.

Real Property Overseas Belonging to a Decreased United States Citizen or National

§ 72.29 Real property overseas belonging to deceased United States citizen or national.

(a) If a consular officer becomes aware that the estate of a deceased United States citizen or national includes an interest in real property located within the consular officer's district that will not pass to any person or entity under the applicable local laws of intestate succession or testamentary disposition, and if local law provides that title may be conveyed to the Government of the United States, the consular officer should notify the Department.

(b) If the Department decides that it wishes to retain the property for its use, the Department will instruct the consular officer to take steps necessary to provide for title to the property to be conveyed to the Government of the United States.

(c) If title to the real estate is conveyed to the Government of the Unites States and the property is of use to the Department of State, the Department may treat such property as if it were an unconditional gift accepted on behalf of the Department of State under section 25 of the State Department Basic Authorities Act (22 U.S.C. 2697) and section 9(a)(3) of the Foreign Service Buildings Act of 1926 (22 U.S.C. 300(a)(3)).

(d) If the Department of State does not wish to retain such real property the Department may treat it as foreign excess property under title IV of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 511 *et seq.*).

§ 72.30 Provisions in a will or advanced directive regarding disposition of remains.

United States state law regarding advance directives, deaths and estates include provisions regarding a person's right to direct disposition of remains. Host country law may or may not accept such directions, particularly if the surviving spouse/next-of-kin disagree with the wishes of the testator/affiant.

Fees

§ 72.31 Fees for consular death and estates services.

(a) Fees for consular death and estates services are prescribed in the Schedule of Fees, 22 CFR 22.1.

(b) The personal estates of all officers and employees of the United States who die abroad while on official duty, including military and civilian personnel of the Department of Defense and the United States Coast Guard are exempt from the assessment of any fees proscribed by the Schedule of Fees.

Dated: January 26, 2007.

Maura A. Harty,

Assistant Secretary Consular Affairs, Department of State.

[FR Doc. 07–889 Filed 2–27–07; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Part 72

[Docket No. OAG 117; A.G. Order No. 2868–2007]

RIN 1105–AB22

Office of the Attorney General; Applicability of the Sex Offender Registration and Notification Act

AGENCY: Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Justice is publishing this interim rule to specify that the requirements of the Sex Offender Registration and Notification Act, title I of Public Law 109–248, apply to sex offenders convicted of the offense for which registration is required before the enactment of that Act. These

requirements include registration by a sex offender in each jurisdiction in which the sex offender resides, is an employee, or is a student. The Attorney General has the authority to make this specification pursuant to sections 112(b) and 113(d) of the Sex Offender Registration and Notification Act.

DATES: *Effective Date:* This interim rule is effective February 28, 2007.

Comment Date: Comments must be received by April 30, 2007.

ADDRESSES: Comments may be mailed to David J. Karp, Senior Counsel, Office of Legal Policy, Room 4509, Main Justice Building, 950 Pennsylvania Avenue, NW., Washington, DC 20530. To ensure proper handling, please reference OAG Docket No. 117 on your correspondence. You may view an electronic version of this interim rule at *http://www.regulations.gov.* You may also comment via the Internet to the Justice Department's Office of Legal Policy (OLP) at *olpregs@usdoj.gov* or by using the www.regulations.gov comment form for this regulation. When submitting comments electronically you must include OAG Docket No. 117 in the subject box.

FOR FURTHER INFORMATION CONTACT: Laura L. Rogers, Director, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking; Office of Justice Programs, United States Department of Justice, Washington, DC, 202 514–4689.

SUPPLEMENTARY INFORMATION: Since the enactment of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (42 U.S.C. 14071) in 1994, there have been national standards for sex offender registration and notification in the United States. All states currently have sex offender registration and notification programs and have endeavored to implement the Wetterling Act standards in their existing programs.

Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109–248), the Sex Offender Registration and Notification Act (SORNA), contains a comprehensive revision of the national standards for sex offender registration and notification. The SORNA reforms are generally designed to strengthen and increase the effectiveness of sex offender registration and notification for the protection of the public, and to eliminate potential gaps and loopholes under the pre-existing standards by means of which sex offenders could attempt to evade registration requirements or the consequences of registration violations. Broadly speaking, the SORNA requirements are of two sorts:

First, SORNA directly imposes registration obligations on sex offenders as a matter of federal law and provides for federal enforcement of these obligations under circumstances supporting federal jurisdiction. These obligations include registration, and keeping the registration current, in each jurisdiction in which a sex offender resides, is an employee, or is a student, with related provisions concerning such matters as the time for registration, the information to be provided by the registrant, and keeping the information up to date. *See* 42 U.S.C. 16913–16917, enacted by SORNA §§ 113–17.

The enforcement mechanisms for these registration obligations include requirements that the Federal Bureau of Prisons and federal probation offices inform offenders released from federal custody or sentenced to probation who are required to register under SORNA that they must comply with SORNA's requirements, as well as requirements that these federal agencies notify state and local authorities concerning the release of such offenders to their areas. *See* 18 U.S.C. 4042(c), as amended by SORNA § 141(f)–(h). Federal offenders subject to SORNA are also obligated to comply with its requirements as mandatory conditions of their supervision. *See* 18 U.S.C. 3563(a)(8), 3583(d), 4209(a), as amended by SORNA § 141(d)–(e), (j). More broadly, 18 U.S.C. 2250, enacted by section 141(a) of SORNA, creates federal criminal liability for any person required to register under SORNA if: (i) the registration requirement is based on a conviction under federal, District of Columbia, Indian tribal, or U.S. territorial law, or the person travels in interstate or foreign commerce or enters or leaves or resides in Indian country, and (ii) the person knowingly fails to register or update a registration as required under SORNA. Because circumstances supporting federal jurisdiction—such as conviction for a federal sex offense as the basis for registration, or interstate travel by a state sex offender who then fails to register in the destination state—are required predicates for federal enforcement of the SORNA registration requirements, creation of these requirements for sex offenders is within the constitutional authority of the Federal Government.

The second broad aspect of SORNA is incorporation by non-federal jurisdictions of the SORNA standards in their own sex offender registration and notification programs. The affected jurisdictions are the states, the District of Columbia, the principal territories, and Indian tribes to the extent provided in SORNA § 127. *See* 42 U.S.C. 16911(10), enacted by SORNA § 111(10). Section 124 of SORNA generally provides a three-year period for jurisdictions to implement SORNA, subject to possible extension by the Attorney General. *See* 42 U.S.C. 16924. Jurisdictions that fail to substantially implement SORNA within the applicable period are subject to a 10% reduction of federal justice assistance (Byrne Grant) funding. The SORNA provisions cast as directions to jurisdictions and their officials are, in relation to the states, only conditions required to avoid this funding reduction. *See* 42 U.S.C. 16925(d), enacted by SORNA § 125(d). Since the SORNA requirements are only partial funding eligibility conditions in relation to the states, and beyond that apply only to jurisdictions that are generally subject to federal legislative authority under the Constitution (D.C., Indian tribal, and U.S. territorial jurisdictions), creation of these requirements is also within the constitutional authority of the Federal Government.

In contrast to SORNA's provision of a three-year grace period for jurisdictions to implement its requirements, SORNA's direct federal law registration requirements for sex offenders are not subject to any deferral of effectiveness. They took effect when SORNA was enacted on July 27, 2006, and currently apply to all offenders in the categories for which SORNA requires registration.

As in the Wetterling Act provisions (42 U.S.C. 14071) that preceded SORNA, Congress recognized in SORNA that supplementation of the statutory text by administrative guidance and rules would be helpful, and in some contexts necessary, to fully realize the legislation's objectives. Section 112(b) of SORNA accordingly directs the Attorney General to issue guidelines and regulations to interpret and implement SORNA. In addition, there are provisions in SORNA that identify specific contexts in which clarification or supplementation of the statutory provisions by the Attorney General is contemplated.

One of these specific contexts appears in section 113(d) of SORNA, which states that ''[t]he Attorney General shall have the authority to specify the applicability of the requirements of this title to sex offenders convicted before the enactment of this Act or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply

with subsection (b).'' 42 U.S.C. 16913(d). (The cross-referenced ''subsection (b)'' states the normal timing rules for initial registration by sex offenders—before release for imprisoned offenders, and within three business days of sentencing for offenders not sentenced to imprisonment.) Section 113(d) ensures that there will be a means to resolve issues about the scope of SORNA's applicability, including any questions that may arise concerning the retroactive applicability of its requirements to sex offenders convicted prior to its enactment, and a means to fill any gaps there may be concerning registration procedures or requirements for sex offenders to whom the Act's normal procedures cannot be applied.

For example, consider the case of an offender who was convicted of, and sentenced to probation for, a sex offense within the categories for which SORNA requires registration prior to the enactment of SORNA, but who did not register near the time of his sentencing because the offense in question was not subject to a registration requirement under federal law or applicable state law at the time. Following the enactment of SORNA, registration by the sex offender within the normal time period specified in SORNA § 113(b)(2)—not later than three business days after sentencing—is not possible, because that time is past. Under section 113(d), the Attorney General has the authority to specify alternative timing rules for registration of offenders of this type.

The purpose of this interim rule is not to address the full range of matters that are within the Attorney General's authority under section 113(d), much less to carry out the direction to the Attorney General in section 112(b) to issue guidelines and regulations to interpret and implement SORNA as a whole. The Attorney General will hereafter issue general guidelines to provide guidance and assistance to the states and other covered jurisdictions in implementing SORNA, as was done under the Wetterling Act, *see* 64 FR 572 (Jan. 5, 1999), and may also issue additional regulations as warranted.

The current rulemaking serves the narrower, immediately necessary purpose of foreclosing any dispute as to whether SORNA is applicable where the conviction for the predicate sex offense occurred prior to the enactment of SORNA. This issue is of fundamental importance to the initial operation of SORNA, and to its practical scope for many years, since it determines the applicability of SORNA's requirements to virtually the entire existing sex offender population.

Considered facially, SORNA requires all sex offenders who were convicted of sex offenses in its registration categories to register in relevant jurisdictions, with no exception for sex offenders whose convictions predate the enactment of SORNA. *See* SORNA §§ 111(1), (5)–(8), 113(a). Nor is there any *ex post facto* problem in applying the SORNA requirements to such offenders because the SORNA sex offender registration and notification requirements are intended to be non-punitive, regulatory measures adopted for public safety purposes, and hence may validly be applied (and enforced by criminal sanctions) against sex offenders whose predicate convictions occurred prior to the creation of these requirements. *See Smith* v. *Doe,* 538 U.S. 84 (2003). Likewise, in terms of underlying policy, the general purpose of SORNA is to ''protect the public from sex offenders and offenders against children'' by establishing ''a comprehensive national system for the registration of those offenders.'' 42 U.S.C. 16901, enacted by SORNA § 102. If SORNA were deemed inapplicable to sex offenders convicted prior to its enactment, then the resulting system for registration of sex offenders would be far from ''comprehensive,'' and would not be effective in protecting the public from sex offenders because most sex offenders who are being released into the community or are now at large would be outside of its scope for years to come. For example, it would not apply to a sex offender convicted of a rape or child molestation offense in 2005, who is sentenced to imprisonment and released in 2020.

Nevertheless, sex offenders with predicate convictions predating SORNA who do not wish to be subject to the SORNA registration requirements, or who wish to avoid being held to account for having violated those requirements, have not been barred from attempting to devise arguments that SORNA is inapplicable to them, e.g., because a rule confirming SORNA's applicability has not been issued. This rule forecloses such claims by making it indisputably clear that SORNA applies to all sex offenders (as the Act defines that term) regardless of when they were convicted. The Attorney General exercises his authority under section 113(d) of SORNA to specify this scope of application for SORNA, regardless of whether SORNA would apply with such scope absent this rule, in order to ensure the effective protection of the public from sex offenders through a comprehensive national system for the registration of such offenders.

The rule adds a new Part 72 to 28 CFR with three sections. Section 72.1 explains that the purpose of this rule is to specify the applicability of the SORNA requirements to sex offenders convicted prior to the Act's enactment. Section 72.2 states that terms used in the regulations have the same meaning as in SORNA § 111. Thus, the statutory definitions may be consulted as to the meaning of such terms as ''sex offender,'' ''convicted,'' and ''jurisdiction.'' Section 72.3 states that the SORNA requirements apply to all sex offenders, including sex offenders convicted of their registration offenses before the enactment of SORNA, and provides illustrations.

Administrative Procedure Act

The implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based on the ''good cause'' exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3), for circumstances in which ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B).

The rule specifies that the requirements of the Sex Offender Registration and Notification Act apply to all sex offenders (as defined in that Act), including those convicted of the offense for which registration is required prior to the enactment of the Act. The applicability of the Act's requirements promotes the effective tracking of sex offenders following their release, by means described in sections 112–17 and 119 of the Act, and the availability of information concerning their identities and locations to law enforcement and members of the public, by means described in sections 118 and 121 of the Act.

The immediate effectiveness of this rule is necessary to eliminate any possible uncertainty about the applicability of the Act's requirements—and related means of enforcement, including criminal liability under 18 U.S.C. 2250 for sex offenders who knowingly fail to register as required—to sex offenders whose predicate convictions predate the enactment of SORNA. Delay in the implementation of this rule would impede the effective registration of such sex offenders and would impair immediate efforts to protect the public from sex offenders who fail to register through prosecution and the imposition of criminal sanctions. The resulting practical dangers include the commission of additional sexual assaults and child sexual abuse or exploitation offenses by sex offenders that could have been prevented had local authorities and the community been aware of their

presence, in addition to greater difficulty in apprehending perpetrators who have not been registered and tracked as provided by SORNA. This would thwart the legislative objective of ''protect[ing] the public from sex offenders and offenders against children'' by establishing ''a comprehensive national system for the registration of those offenders,'' SORNA § 102, because a substantial class of sex offenders could evade the Act's registration requirements and enforcement mechanisms during the pendency of a proposed rule and delay in the effectiveness of a final rule.

It would accordingly be contrary to the public interest to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities for the purposes of that Act because the regulation concerns the application of the requirements of the Sex Offender Registration and Notification Act to certain offenders.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation 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. There has been substantial consultation with state officials regarding the interpretation and implementation of the Sex Offender Registration and Notification Act. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 72

Crime, Information, Law enforcement, Prisons, Prisoners, Records, Probation and parole.

■ For the reasons stated in the preamble, part 72 of chapter I of Title 28 of the Code of Federal Regulations is added to read as follows:

PART 72—SEX OFFENDER REGISTRATION AND NOTIFICATION

Sec.
72.1 Purpose.
72.2 Definitions.
72.3 Applicability of the Sex Offender Registration and Notification Act.

Authority: Pub. L. 109–248, 120 Stat. 587.

§ 72.1 Purpose.

This part specifies the applicability of the requirements of the Sex Offender Registration and Notification Act to sex offenders convicted prior to the enactment of that Act. These requirements include registering and keeping the registration current in each jurisdiction in which a sex offender resides, is an employee, or is a student. The Attorney General has the authority to specify the applicability of the Act's requirements to sex offenders convicted prior to its enactment under sections 112(b) and 113(d) of the Act.

§ 72.2 Definitions.

All terms used in this part that are defined in section 111 of the Sex Offender Registration and Notification Act (title 1 of Pub. L. 109–248) shall have the same definitions in this part.

§ 72.3 Applicability of the Sex Offender Registration and Notification Act.

The requirements of the Sex Offender Registration and Notification Act apply to all sex offenders, including sex offenders convicted of the offense for which registration is required prior to the enactment of that Act.

Example 1. A sex offender is federally convicted of aggravated sexual abuse under 18 U.S.C. 2241 in 1990 and is released following imprisonment in 2007. The sex offender is subject to the requirements of the Sex Offender Registration and Notification Act and could be held criminally liable under 18 U.S.C. 2250 for failing to register or keep the registration current in any jurisdiction in which the sex offender resides, is an employee, or is a student.

Example 2. A sex offender is convicted by a state jurisdiction in 1997 for molesting a child and is released following imprisonment in 2000. The sex offender initially registers as required, but disappears after a couple of years and does not register in any other jurisdiction. Following the enactment of the Sex Offender Registration and Notification Act, the sex offender is found to be living in another state and is arrested there. The sex offender has violated the requirement under the Sex Offender Registration and Notification Act to register in each state in which he resides, and could be held criminally liable under 18 U.S.C. 2250 for the violation because he traveled in interstate commerce.

Dated: February 16, 2007.

Alberto R. Gonzales,

Attorney General.

[FR Doc. E7–3063 Filed 2–27–07; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 253

RIN 1010–AD39

Oil and Gas and Sulphur Operations in the Outer Continental Shelf and Oil Spill Financial Responsibility for Offshore Facilities—Civil Penalties

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The MMS is required to review the maximum daily civil penalty

assessment allowable under 43 U.S.C. 1350 at least once every 3 years for the purpose of adjusting this amount in accordance with the Consumer Price Index (CPI) as prepared by the Bureau of Labor Statistics, Department of Labor. The same review and adjustment process is required every 4 years for the maximum daily civil penalty assessment allowable under 33 U.S.C. 2716a. The intended effect is for punitive assessments to keep up with inflation.

EFFECTIVE DATE: This final rule becomes effective on March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Joanne McCammon, Safety and Enforcement Branch at (703) 787–1292 or e-mail *Joanne.McCammon@mms.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) expanded and strengthened MMS's authority to impose penalties for violating regulations promulgated under the Outer Continental Shelf (OCS) Lands Act. Section 8201 of OPA 90 (43 U.S.C. 1350) authorizes the Secretary of the Interior (Secretary) to assess a civil penalty without providing notice and time for corrective action where a failure to comply with applicable regulations results in a threat of serious, irreparable, or immediate harm or damage to human life or the environment. The goal of the MMS OCS Civil Penalty Program is to ensure safe and clean operations on the OCS. By pursuing, assessing, and collecting civil penalties, the program is designed to encourage compliance with OCS statutes and regulations.

Not all regulatory violations warrant a review to initiate civil penalty proceedings; however, violations that cause injury, death, or environmental damage, or pose a threat to human life or the environment, will trigger such review.

Every 3 years, in accordance with OPA 90 (43 U.S.C. 1350(b)(1)), MMS analyzes the civil penalty maximum amount in conjunction with the CPI prepared by the U.S. Department of Labor. If an adjustment is necessary, MMS informs the public through the **Federal Register** of the new maximum amount. MMS uses Office of Management and Budget (OMB) guidelines for determining how penalty amounts should be rounded. In computing this new civil penalty maximum amount, MMS divided the August 2006 CPI of 203.9 by the previously used August 2002 CPI of 180.7. This resulted in a multiplying factor of 1.13. The previous maximum amount of $30,000 per violation per day was multiplied by the 1.13 factor and resulted in a new maximum penalty amount of $33,900. This amount was rounded to $35,000 as per OMB guidelines. The new civil penalty maximum amount is now $35,000 per violation per day. It must be remembered that this is a maximum amount and is only used when a non-compliance issue warrants it.

OPA 90 also established civil penalties for failure to comply with financial responsibility regulations. Section 4303 of OPA 90 (33 U.S.C. 2716a) authorized the President (and, by delegation, the Secretary) to assess a civil penalty of up to $25,000 per day for each violation. The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410) established a 4-year cycle for review and adjustment of all federally imposed civil monetary penalties in order to maintain the deterrent effect of such penalties, and promote compliance with the law. The cost-of-living adjustment process (set out in a note to 28 U.S.C. 2461) is the same as that described above. Applying the multiplying factor of 1.13 to the previous maximum amount of $25,000, results in a new maximum civil penalty of $28,250 per violation per day. However, Section 3720E of the Omnibus Appropriations Act of 1996 (Pub. L. 104–134) included a provision limiting the first adjustment of any civil penalty pursuant to the 1990 Act to 10 percent. This is the first adjustment of 33 U.S.C. 2716a. The new civil penalty maximum amount under 33 U.S.C. 2716a is therefore $27,500 per violation per day.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This final rule is not a significant rule as determined by the OMB and is not subject to review under E.O. 12866.

(1) This final rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This final rule simply adjusts the maximum civil penalty amount using the CPI.

(2) This final rule will not create a serious inconsistency or otherwise interfere with action taken or planned by another agency because the rule only adjusts the civil penalty maximum.

(3) This final rule will not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients. The changes in this final rule simply adjust the civil penalty maximum.

(4) This final rule will not raise novel legal or policy issues.

Regulatory Flexibility Act (RFA)

The Department of the Interior (DOI) certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This final rule applies to all lessees that operate on the OCS. Generally, lessees that operate under this rule would fall under the Small Business Administration's (SBA) North American Industry Classification System Codes 211111, Crude Petroleum and Natural Gas Extraction and 213111, Drilling Oil and Gas Wells. Under these codes, the SBA considers all companies with fewer than 500 employees to be a small business. We estimate that of the 130 lessees that explore for and produce oil and gas on the OCS, approximately 90 are small businesses (70 percent). The primary effect of the final rule is the increase in civil penalties assessed only for those operators that do not comply with Federal OCS regulations.

This rule will have no impact on the oil and gas industry operators that comply with Federal OCS regulations. For those operators whose non-compliance results in a civil penalty, the increase resulting from the inflation factor of 1.13 amounts to an increase of less than $170,000 spread over an average of 39 cases per year or slightly under $4,400 additional per case. This is using data over the past 10 years and averaging civil penalties paid and number of cases paid per year. This dollar amount is minor considering the substantial costs of operations on the OCS. This is true for even the smallest of OCS operators.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the SBA without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This final rule:

a. Will not have an annual effect on the economy of $100 million or more. As described above, we estimate an annual increase of $4,400 per civil penalty case.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The minor increase in cost will not change the way the oil and gas industry conducts business, nor will it affect regional oil and gas prices. Therefore, it will not cause major cost increases for consumers, the oil and gas industry, or any Government agencies.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Leasing on the U.S. OCS is limited to residents of the U.S. or companies incorporated in the U.S. This final rule will not change that requirement.

Unfunded Mandates Reform Act (UMRA)

This final rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by UMRA (2 U.S.C. 1531 *et seq.*) is not required. This is because the final rule will not affect State, local, or tribal governments, and the effect on the private sector is small.

Takings Implication Assessment (Executive Order 12630)

The final rule is not a governmental action capable of interference with constitutionally protected property rights. Thus, MMS did not need to prepare a Takings Implication Assessment according to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Federalism (Executive Order 13132)

With respect to E.O. 13132, this final rule will not have federalism implications. This final rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this final rule will not affect that role.

Civil Justice Reform (Executive Order 12988)

With respect to E.O. 12988, The Office of the Solicitor has determined that the final rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act (PRA) of 1995

This final rule does not contain any information collection subject to the PRA, and does not require a submittal to OMB for review and approval under section 3507(d) of the PRA.

National Environmental Policy Act (NEPA) of 1969

The final rulemaking does not introduce requirements that would cause lessees or operators to perform or change any activities on the OCS which would result in environmental impacts beyond those addressed in the NEPA documents associated with the OCS plans.

MMS has analyzed this final rule according to the criteria of the NEPA and 516 Department Manual 6, Appendix 10.4C(1), ''Issuance and/or modification of regulations.'' This final rule does not constitute a major Federal action significantly affecting the quality of the human environment and falls within the categorical exclusion of Appendix 10.4C(1) because the impact of the final rule will be limited to administrative and economic effects. A detailed statement under the NEPA is not required.

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires the agency to prepare a Statement of Energy Effects when it takes a regulatory action that is identified as a significant energy action. This final rule is not a significant energy action, and therefore would not require a Statement of Energy Effects because it:

a. Is not a significant regulatory action under E.O. 12866,

b. Is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and

c. Has not been designated by the Administrator of the Office of Information and Regulatory Affairs, OMB, as a significant energy action.

Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in E.O. 13175, we have evaluated this final rule and determined that it has no potential effects on federally recognized Indian tribes. There are no Indian or tribal lands on the OCS.

List of Subjects in

30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental protection, Investigations, Oil and gas exploration, Penalties, Reporting and recordkeeping requirements.

30 CFR Part 253

Continental shelf, Environmental protection, Oil and gas exploration, Penalties, Reporting and recordkeeping requirements.

Dated: February 5, 2007.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

■ For the reasons stated in the preamble, Minerals Management Service (MMS) amends 30 CFR parts 250 and 253 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. Authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*, 31 U.S.C. 9701.

■ 2. Revise § 250.1403 to read as follows:

§ 250.1403 What is the maximum civil penalty?

The maximum civil penalty is $35,000 per day per violation.

PART 253—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

■ 3. Authority citation for part 253 is amended to read as follows:

Authority: 33 U.S.C. 2701 *et seq.*, 28 U.S.C. 2461 (note)

■ 4. In § 253.51, revise paragraph (a) to read as follows:

§ 253.51 What are the penalties for not complying with this part?

(a) If you fail to comply with the financial responsibility requirements of OPA at 33 U.S.C. 2716 or with the requirements of this part, then you may be liable for a civil penalty of up to $27,500 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

* * * * *

[FR Doc. E7–3427 Filed 2–27–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AD19

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Incorporate API RP 65 for Cementing Shallow Water Flow Zones

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: MMS is incorporating by reference the First Edition of the American Petroleum Institute's Recommended Practice (RP) for Cementing Shallow Water Flow (SWF) Zones in Deep Water Wells (API RP 65) into MMS regulations. From 1987 to 2004, at least 113 Outer Continental Shelf (OCS) wells encountered SWF to varying degrees. While the majority of these wells experienced SWF to only a minor degree, there were instances of severe encounters resulting in abandonment of well sites and loss of wells. This action establishes best practices for cementing wells in deep water areas of the OCS that are prone to SWF.

EFFECTIVE DATE: March 30, 2007. The incorporation by reference of the publication listed in the regulation is approved by the Director of the Federal Register as of March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Kirk Malstrom, Office of Offshore Regulatory Programs, Regulations and Standards Branch at (703) 787–1751.

SUPPLEMENTARY INFORMATION:

Background: Since 1987, OCS operators have reported encountering SWF problems while drilling in specific areas of the Gulf of Mexico (GOM). Between 1987 and 2004, MMS is aware of at least 113 wells, drilled by approximately 25 different operators, that encountered problems with SWF. General information on SWFs, and maps showing the location of areas in the GOM that have had documented cases of SWF, can be viewed at our Web site: *http://www.gomr.mms.gov/homepg/offshore/safety/wtrflow.html.*

This final rule updates the requirements for cementing operations in 30 CFR Part 250 Subpart A—General, and Subpart D—Oil and Gas Drilling Operations. Subpart A is amended to incorporate by reference ''API RP 65, Recommended Practice for Cementing SWF Zones in Deep Water Wells,'' First Edition, September 2002. Subpart D is amended by adding new subparagraph (e) to § 250.415, detailing when API RP 65 is to be evaluated by an operator in designing a cementing program. Some of the key points of this final rulemaking include the following:

- Use of this standard is not warranted for every OCS well, or for all casing strings in a particular well. Its use is limited to situations where there is a risk of encountering a SWF based upon past drilling activity, seismic data or interpretation, or correlation of data from offset wells in water depths greater than 500 feet (SWF has not been encountered in wells in water depths less than 500 feet).
- The risk associated with encountering a SWF is characterized in one of two ways: (1) An area with an unknown SWF potential, or (2) an area known to contain a SWF hazard.
- For purposes of this final rule, these terms are defined as follows:
  - *An area with an unknown SWF potential* means a zone or geologic formation where neither the presence nor absence of potential for a SWF has been confirmed.
  - *An area known to contain a SWF hazard* means a zone or geologic formation for which drilling has confirmed the presence of SWF.
- Use of this standard is limited to water depths greater than 500 feet for areas with an unknown SWF potential or areas known to contain a SWF hazard. Data available to the MMS on the 113 wells that have encountered SWF show that the water depths for these wells ranged from approximately 500 feet to 9,675 feet, with an average water depth of 3,560 feet.
- As part of an operator's Application for Permit to Drill (Form MMS–123), a statement needs to be included concerning how API RP 65 was evaluated by the operator. The operator must also detail which of the cementing techniques from this standard were used as part of the cementing program for a well drilled in either ''areas with an unknown SWF potential'' or ''areas known to contain a SWF hazard.'' This information will be evaluated by MMS during the review of the application for permit to drill, and discussed with the operator as appropriate.
- Particular attention should be placed on evaluating, designing, and implementing the cementing programs of both the surface and conductor casing strings in wells requiring review under API RP 65. Data available to the MMS on the 113 wells that have encountered SWF show that the tops of the SWF zones ranged from approximately 450 feet below mud line to 3,005 feet below mud line, with an average depth of encounter of 1,305 feet below mud line. These depths are typical of the setting depths of either conductor or surface casings.

Comments on the Rule: On May 22, 2006, MMS published a proposed rule (71 FR 29280) to incorporate API RP 65. The public comment period ended on July 21, 2006. MMS received six comments on the proposed rule. All the comments came from companies or organizations working in the oil and gas industry, including ExxonMobil, BP, Devon, BJ Services Company, Schlumberger, and the Offshore Operators Committee (OOC). A majority of the comments addressed similar issues mostly on the bias toward using foam cement to address the SWF issue in sections of the RP. Other comments expressed concern that singling out a specific cementing technique hinders new methods and technology development, and that this RP is not appropriate for other cementing applications. You may view these comments on MMS' Public Connect on-line commenting system at: *http://www.mms.gov/federalregister/PublicComments/APIRP65.htm.*

Discussion of Comments:

Comment: Five out of the six comments wanted MMS to omit appendix F of API RP 65. The comments suggest omitting this appendix due to a perceived bias toward use of foam cementing. At the time the RP was developed, foam was the best available cement system for use in combating SWFs. Since development of this standard, new options have been developed that are similarly efficient, i.e., non-compressible systems. A few comments also recommend omitting appendices D and E due to bias toward foam cement.

Response: MMS agrees that there appears to be a bias toward the use of foam cement in appendices D, E, and F. However, under this final rulemaking, MMS does not require a company to comply with the provisions contained in these appendices or submit any information related to these appendices. MMS views the appendices in this RP as examples and background information. With specific reference to appendix F, even with the apparent bias towards use of foam cement, MMS still views the cementing matrix as a useful tool that can help a company evaluate the performance of their cement jobs and improve upon subsequent cement operations.

Comment: One comment provided further recommendations and alternate language to change sections 11.1, 11.2, and 11.3 of the RP to eliminate bias towards foam cement.

Response: MMS does not have the authority to change an API document. While MMS could elect not to incorporate by reference specified provisions of the document, it has instead opted to incorporate API RP 65, First Edition (September 2002) in its entirety. API updates these recommended practices periodically through a consensus-based process. MMS believes it best that the changes suggested by this commenter be proposed to the API review committee so that they can be considered by a cross-section of industry. If the proposals are adopted by API, and incorporated into a revised edition of this RP, MMS would then have the option to consider incorporating the revised edition into the regulations.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This final rule is not a significant rule as determined by the Office of Management and Budget (OMB), and is not subject to review under E.O. 12866.

(1) The final rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The economic analysis prepared by the MMS indicates that, if the techniques included in API RP 65 are evaluated by operating companies in the planning phases of wells drilled in *Areas with an Unknown SWF Potential* or *Areas Known to Contain a SWF Hazard,* this process will increase the planning costs associated with these wells by no more than $20,000 per well (industry estimate). This cost includes planning associated with a full range of SWF mitigation measures. The measures include casing centralization; pipe movement; use of light weight cements such as a foam system; use of non-compressible systems; proper mud circulation prior to cementing; site selection; the drilling of pilot holes; setting extra strings of casing; use of measurement while drilling technology; pressure while drilling technology; and use of a drilling riser for shallow sections of a deep water well. Today, most lessees conducting operations in SWF-prone areas already use most of these techniques. As a result, additional costs associated with implementing these techniques under this final rule will be negligible.

Based on information available to MMS, there have been a total of 1,275 wells drilled on the OCS in water depths of 500 feet or greater during the period 2000–2004. The cost to industry over the past 5 years for SWF mitigation would have been approximately $25.5 million ($20,000 per well × 1,275 wells = $25.5 million) if the evaluations required for this final rule were conducted prior to drilling all of these wells. In reality, a significant number of the 1,275 wells would have been located in areas known to be free of SWF, and would not have required an operating company to implement the techniques included in API RP 65 as part of their well planning efforts, resulting in a significantly lower cost to the offshore industry.

Using the well data trends from 2000–2004, in water depths greater than 500 feet, MMS estimates an average of 200 wells will be drilled per year. Using the average of 200 wells, the estimated annual cost to industry will be approximately $4 million ($20,000 per well × 200 wells = $4 million). Based on actual drilling figures, estimated total well costs are in excess of $40 million per well. Industry estimates of $20,000 per well for SWF mitigation represents only 0.05 percent of total well costs. The possible consequences of SWF, well abandonment, or well loss are far more severe than the 0.05 percent of well costs for SWF mitigation.

For the above reasons, the final rule will have a minor economic effect on the offshore oil and gas industry.

(2) The final rule will not create a serious inconsistency or otherwise interfere with action taken or planned by another agency. It will not change the relationships of the OCS oil and gas leasing program with other agencies' actions.

(3) This final rule will not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients. The changes proposed in this rule are strictly planning requirements for specific well cementing processes to prevent accidents and environmental pollution on the OCS.

(4) This final rule will not raise novel legal or policy issues.

Regulatory Flexibility Act (RFA)

The Department certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

The changes in the final rule will affect lessees and operators of leases on the OCS. This could include about 130 active Federal oil and gas lessees. Small lessees that operate under this rule fall under the Small Business Administration's (SBA) North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 70 percent of these companies are considered small. This final rule will therefore affect a substantial number of small entities.

As previously stated, there have been a total of 1,275 wells drilled on the OCS in water depths of 500 feet or greater during the period 2000–2004. Of the total 1,275 wells drilled, 1,107 were drilled by large businesses and 168 by small businesses. The 168 wells were drilled by a total of 15 small businesses. The 1,107 large business wells correspond to 87 percent of all wells drilled, leaving 13 percent as small business wells.

The final rule will have a minor economic effect on the oil and gas offshore lessees and operators on the OCS, regardless of company size. This is due to the relatively small SWF mitigation costs in relation to the high drilling costs. Because of the high potential costs of SWF, well abandonment, or well loss, in the overwhelming majority of cases operators choose to perform improved and safer well cementing procedures on their own initiative, not because of MMS safety requirements. The final rule will add relatively little to the cost of a well cementing procedure. Thus, there will not be a significant impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). The final rule will not cause the business practices of any of these companies to change.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

The final rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This final rule:

a. Will not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Leasing on the OCS is limited to residents of the U.S. or companies incorporated in the U.S. This final rule will not change that requirement.

Unfunded Mandates Reform Act (UMRA)

This final rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (Executive Order 12630)

This final rule is not a governmental action capable of interference with constitutionally protected property rights. Thus, MMS did not need to prepare a Takings Implication Assessment according to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Federalism (Executive Order 13132)

With respect to E.O. 13132, this final rule will not have federalism implications. This final rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this final rule will not affect that role.

Civil Justice Reform (Executive Order 12988)

With respect to E.O. 12988, the Office of the Solicitor has determined that the final rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act (PRA)

The revisions to 30 CFR 250 refer to, but do not change, information collection requirements in current regulations. They impose no new reporting or recordkeeping requirements and a submission to OMB under § 3507(d) of the PRA is not required. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a number, you are not required to respond. OMB approved the referenced information collection requirements for 30 CFR part 250 under OMB Control Numbers 1010–0114 (22,538 burden hours), expiration October 31, 2007, and 1010–0141 (163,714 burden hours), expiration August 31, 2008.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. MMS has analyzed this rule under the criteria of the NEPA and 516 Departmental Manual 6, Appendix 10.4C(1). MMS completed a Categorical Exclusion Review for this action and concluded that ''the rulemaking does not represent an exception to the established criteria for categorical exclusion; therefore, preparation of an environmental analysis or environmental impact statement will not be required.''

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires the agency to prepare a Statement of Energy Effects when it takes a regulatory action that is identified as a significant energy action. This final rule is not a significant energy action; and therefore, will not require a Statement of Energy Effects because it:

a. Is not a significant regulatory action under E.O. 12866,

b. Is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and

c. Has not been designated by the Administrator of the Office of Information and Regulatory Affairs, OMB, as a significant energy action.

Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in E.O. 13175, we have evaluated this final rule and determined that it has no potential effects on federally recognized Indian tribes. There are no Indian or tribal lands on the OCS.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental protection, Incorporation by reference, Oil and gas exploration, and Reporting and recordkeeping requirements.

Dated: January 31, 2007.

C. Stephan Allred,

Assistant Secretary—Land and Minerals Management.

■ For the reasons stated in the preamble, the MMS amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*, 31 U.S.C. 9701.

■ 2. In § 250.198, the following document incorporated by reference is added to the table in paragraph (e) in alphanumerical order.

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of documents	Incorporated by reference at
* * * * * * *	
API RP 65, Recommended Practice for Cementing Shallow Water Flow Zones in Deep Water Wells, First Edition, September 2002, Product No. G56001	§ 250.415(e)
* * * * * * *	

■ 3. In § 250.415, add a new paragraph (e) as set forth below.

§ 250.415 What must my casing and cementing programs include?

* * * * *

(e) a statement of how you evaluated the best practices included in API RP 65, Recommended Practice for Cementing Shallow Water Flow Zones in Deep Water Wells (incorporated by reference as specified in § 250.198), if you drill a well in water depths greater than 500 feet and are in either of the following two areas:

(1) An ''area with an unknown shallow water flow potential'' is a zone or geologic formation where neither the presence nor absence of potential for a shallow water flow has been confirmed.

(2) An ''area known to contain a shallow water flow hazard'' is a zone or geologic formation for which drilling has confirmed the presence of shallow water flow.

[FR Doc. E7–3426 Filed 2–27–07; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV101–6038; FRL–8273–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Notice of administrative change.

SUMMARY: EPA is updating the materials submitted by West Virginia that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the West Virginia Department of Environmental Protection and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the Regional Office.

EFFECTIVE DATE: This action is effective February 28, 2007.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566–1742; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State revises as necessary to address the unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997 **Federal Register** document. On February 10, 2005 (70 FR 7024), EPA published a **Federal Register** beginning the new IBR procedure for West Virginia. In this document, EPA is doing the following:

1. Announcing the update to the IBR material as of December 15, 2006.

2. Making corrections to the following entries listed in the paragraph 52.2520(c) chart, as described below:

a. 45 CSR 14, ''State citation [Chapter 16–20 or 45 CSR]'' column—revising the entries for the regulation citation and Sections 45–14–2, 45–14–3, and 45–14–19.

b. 45 CSR 14, ''Title/subject'' column—revising the entry for Section 45–14–25.

c. 45 CSR 14, ''State effective date'' column, all entries—revising the effective date from ''6/2/05'' to ''6/1/05.''

d. 45 CSR 19—Adding entries for Tables 45–19A and 45–19B. These tables were part of the regulatory text of 45 CSR 19 which EPA approved as a revision of the West Virginia SIP on November 2, 2006 (71 FR 64668), but were inadvertently omitted from the amended rule for 40 CFR 52.2520(c) published at 71 FR 64670.

e. 45 CSR 19, ''State citation [Chapter 16–20 or 45 CSR]'' column—revising the entries for the regulation citation and Sections 45–14–2, 45–14–3, and 45–14–17.

f. 45 CSR 19, ''Title/subject'' column—revising the entry for Section 45–19–23.

g. 45 CSR 19, ''State effective date'' column, all entries—revising the effective date from ''6/2/05'' to ''6/1/05.''

h. 45 CSR 14 and 45 CSR 19, ''Additional explanation at 40 CFR 52.2565'' column, all entries—adding the SIP effective date for each entry.

3. Making corrections to the title of the ''Additional information'' column in the paragraph 52.2520(d) chart.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation, and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect chart entries.

Statutory and Executive Order Reviews

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 tribal implications because it will 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). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. 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. 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

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the West Virginia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this ''Identification of plan'' reorganization update action for West Virginia.

List of Subjects in 40 CFR Part 52

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

Dated: January 18, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. Section 52.2520 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after December 15, 2006 will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the rules/regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of December 15, 2006.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) *EPA-Approved Regulations*

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR § 52.2565
[45 CSR] Series 1 NO_X Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides				
Section 45–1–1	General	5/1/06	9/28/06 71 FR 56881.	
Section 45–1–2	Definitions	5/1/06	9/28/06 71 FR 56881.	

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR § 52.2565
Section 45–1–3	Acronyms	5/1/06	9/28/06 71 FR 56881.	
Section 45–1–4	NO_X Budget Trading Program Applicability	5/1/06	9/28/06 71 FR 56881.	
Section 45–1–5	Retired Unit Exemption	5/1/06	9/28/06 71 FR 56881.	
Section 45–1–6	NO_X Budget Trading Program Standard Requirements.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–7	Computation of Time	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–10	Authorization and Responsibilities of the NO_X Authorized Account Representative.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–11	Alternate NO_X Authorized Account Representative	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–12	Changing the NO_X Authorized Account Representative and the Alternate NO_X Authorized Account Representative; Changes in Owners and Operators.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–13	Account Certificate of Representation	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–14	Objections Concerning the NO_X Authorized Account Representative.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–20	General NO_X Budget Trading Program Permit Requirements.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–21	NO_X Budget Permit Applications	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–22	Information Requirements for NO_X Budget Permit Applications.	5/1/06	9/28/06 71 FR 56881.	
Section 45–1–23	NO_X Budget Permit Contents	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–24	NO_X Budget Permit Revisions	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–30	Compliance Certification Report	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–31	Secretary's and Administrator's Action on Compliance Certifications.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–40	State NO_X Trading Program Budget	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–41	Timing Requirements for State NO_X Allowance Allocations.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–42	State NO_X Allowance Allocations	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–43	Compliance Supplement Pool	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–50	NO_X Allowance Tracking System Accounts	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–51	Establishment of Accounts	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–52	NO_X Allowance Tracking System Responsibilities of NO_X Authorized Account Representative.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–53	Recordation of NO_X Allowance Allocations	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–54	Compliance	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–55	NO_X Allowance Banking	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–56	Account Error	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–57	Closing of General Accounts	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–60	Submission of NO_X Allowance Transfers	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–61	Allowance Transfer Recordation	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–62	Notification	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–70	General Monitoring Requirements	5/1/06	9/28/06 71 FR 56881.	
Section 45–1–71	Initial Certification and Recertification Procedures	5/1/06	9/28/06 71 FR 56881.	
Section 45–1–72	Out of Control Periods	5/1/06	9/28/06 71 FR 56881.	
Section 45–1–73	Notifications	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–74	Recordkeeping and Reporting	5/1/06	9/28/06 71 FR 56881.	
Section 45–1–75	Petitions	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–76	Additional Requirements to Provide Heat Input Data.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–80	Individual Opt-in Applicability	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–81	Opt-in General Requirements	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–82	Opt-in NO_X Authorized Account Representative	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–83	Applying for NO_X Budget Opt-in Permit	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–84	Opt-in Process	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–85	NO_X Budget Opt-in Permit Contents	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–86	Withdrawal From NO_X Budget Trading Program ...	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–87	Change in Regulatory Status	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–88	NO_X Allowance Allocations to Opt-in Units	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–89	Appeal Procedures	5/1/06	9/28/06 71 FR 56881	New Section.
Section 45–1–90	Requirements for Stationary Internal Combustion Engines.	5/1/06	9/28/06 71 FR 56881	New Section.
Section 45–1–100	Requirements for Emissions of NO_X From Cement Manufacturing Kilns.	5/1/06	9/28/06 71 FR 56881.	
[45 CSR] Series 2 To Prevent and Control Particulate Air Pollution From Combustion of Fuel in Indirect Heat Exchangers				
Section 45–2–1	General	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–2	Definitions	8/31/00	8/11/03 68 FR 47473	(c)(56)

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR § 52.2565
Section 45–2–3	Visible Emissions of Smoke and/or Particulate Matter Prohibited and Standards of Measurement.	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–4	Weight Emission Standards	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–5	Control of Fugitive Particulate Matter	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–6	Registration	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–7	Permits	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–8	Testing, Monitoring, Recordkeeping, and Reporting.	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–9	Start-ups, Shutdowns, and Malfunctions	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–10	Variances	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–11	Exemptions	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–12	Inconsistency Between Rules	8/31/00	8/11/03 68 FR 47473	(c)(56)
Table 45–2A	[Total Allowable Particulate Matter Emission Rate for All Type 'c' Fuel Burning Units Located at One Plant].	8/31/00	8/11/03 68 FR 47473	(c)(56)
45CSR2 Appendix Compliance Test Procedures for 45CSR2				
Section 1	General	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 3	Symbols	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 4	Adoption of Test Methods	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 5	Unit Load and Fuel Quality Requirements	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 6	Minor Exceptions	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 7	Pretest and Post Test General Requirements	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 8	Heat Input Data Measurements	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 9	Computations and Data Analysis	8/31/00	8/11/03 68 FR 47473	(c)(56)
[45 CSR] Series 3 To Prevent and Control Air Pollution From the Operation of Hot Mix Asphalt Plants				
Section 45–3–1	General	8/31/00	10/11/02 67 FR 63270 ...	(c)(48)
Section 45–3–2	Definitions	8/31/00	10/11/02 67 FR 63270 ...	(c)(48)
Section 45–3–3	Emission of Smoke and/or Particulate Matter Prohibited and Standards of Measurement—Visible.	8/31/00	10/11/02 67 FR 63270 ...	(c)(48)
Section 45–3–4	Emission of Smoke and/or Particulate Matter Prohibited and Standards of Measurement—Weight Emissions.	8/31/00	10/11/02 67 FR 63270 ...	(c)(48)
Section 45–3–5	Permits	8/31/00	10/11/02 67 FR 63270 ...	(c)(48)
Section 45–3–6	Reports and Testing	8/31/00	10/11/02 67 FR 63270 ...	(c)(48)
Section 45–3–7	Variance	8/31/00	10/11/02 67 FR 63270 ...	(c)(48)
Section 45–3–8	Circumvention	8/31/00	10/11/02 67 FR 63270 ...	(c)(48)
Section 45–3–9	Inconsistency Between Rules	8/31/00	10/11/02 67 FR 63270 ...	(c)(48)
[45 CSR] Series 5 To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants, Coal Handling Operations, and Coal Refuse Disposal Areas				
Section 45–5–1	General	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–2	Definitions	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–3	Emission of Particulate Matter Prohibited and Standards of Measurement.	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–4	Control and Prohibition of Particulate Emissions From Coal Thermal Drying Operations of a Coal Preparation Plant.	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–5	Control and Prohibition of Particulate Emissions From an Air Table Operation of a Coal Preparation Plant.	10/22/93	7/13/99 64 FR 37681	(c)(42)
Section 45–5–6	Control and Prohibition of Fugitive Dust Emissions From Coal Handling Operations and Preparation Plants.	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–7	Standards for Coal Refuse Disposal Areas	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–8	Burning Coal Refuse Disposal Areas	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–9	Monitoring of Operations	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–10	Construction, Modification, and Relocation Permits	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–11	Operating Permits	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–12	Reporting and Testing	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–13	Variance	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–14	Transfer of Permits	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–15	Inconsistency Between Rules	8/31/00	10/7/02 67 FR 62379	(c)(47)

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR § 52.2565
Appendix	Particulate Emission Limitations and Operational Monitoring Requirements Applicable to Thermal Dryers Installed Before October 24, 1974.	8/31/00	10/7/02 67 FR 62379	(c)(47)
[45 CSR] Series 6 To Prevent and Control Air Pollution From Combustion of Refuse				
Section 45–6–1	General	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–2	Definitions	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–3	Open Burning Prohibited	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–4	Emission Standards for Incinerators and Incineration.	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–5	Registration	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–6	Permits	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–7	Reports and Testing	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–8	Variances	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–9	Emergencies and Natural Disasters	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–10	Effect of the Rule	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–11	Inconsistency Between Rules	7/1/01	2/10/03 68 FR 6627	(c)(51)
[45 CSR] Series 7 To Prevent and Control Particulate Matter Air Pollution From Manufacturing Process Operations				
Section 45–7–1	General	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–2	Definitions	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–3	Emission of Smoke and/or Particulate Matter Prohibited and Standards of Measurement.	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–4	Control and Prohibition of Particulate Emissions by Weight From Manufacturing Process Source Operations.	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–5	Control of Fugitive Particulate Matter	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–6	Registration	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–7	Permits	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–8	Reporting and Testing	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–9	Variance	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–10	Exemptions	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–11	Alternative Emission Limits for Duplicate Source Operations.	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–12	Inconsistency Between Rules.	08/31/00	06/03/03 68 FR 33010	(c)(55)
Table 45–7A, Table 45–7B.	[Maximum Allowable Emission Rates From Sources Governed by 45 CFR Series 7].	08/31/00	06/03/03 68 FR 33010	(c)(55)
[Ch. 16–20] TP–4 Compliance Test Procedures for Regulation VII—''To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations''				
Section 1	General	2/23/84	6/28/85 45 FR 26732	no (c) number;
Section 2	Visible Emission Test Procedure	2/23/84	6/28/85 45 FR 26732	no (c) number;
Section 3	Mass Emission Test Procedures	2/23/84	6/28/85 45 FR 26732	no (c) number;
[45 CSR] Series 8 Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter				
Section 45–8–1	General	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–8–2	Definitions	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–8–3	Ambient Air Quality Standards	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–8–4	Methods of Measurement	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–8–5	Inconsistency Between Regulations	4/25/90	6/28/93 58 FR34526	(c)(28)
[45 CSR] Series 9 Ambient Air Quality Standards for Carbon Monoxide and Ozone				
Section 45–9–1	General	6/1/00	10/7/02 67 FR 62381	(c)(50)
Section 45–9–2	Anti-Degradation Policy	6/1/00	10/7/02 67 FR 62381	(c)(50)
Section 45–9–3	Definitions	6/1/00	10/7/02 67 FR 62381	(c)(50)
Section 45–9–4	Ambient Air Quality Standards	6/1/00	10/7/02 67 FR 62381	(c)(50)
Section 45–9–5	Methods of Measurement	6/1/00	10/7/02 67 FR 62381	(c)(50)
[45 CSR] Series 10 To Prevent and Control Air Pollution From The Emission of Sulfur Oxides				
Section 45–10–1	General	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–2	Definitions	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–3	Sulfur Dioxide Weight Emission Standards for Fuel Burning Units.	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–4	Standards for Manufacturing Process Source Operations.	8/31/00	6/3/03 68 FR 33002	(c)(53)

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR § 52.2565
Section 45–10–5	Combustion of Refinery or Process Gas Streams.	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–6	Registration	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–7	Permits	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–8	Testing, Monitoring, Recordkeeping and Reporting	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–9	Variance	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–10	Exemptions and Recommendations	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–11	Circumvention	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–12	Inconsistency Between Rules	8/31/00	6/3/03 68 FR 33002	(c)(53)
Table 45–10A	[Priority Classifications]	8/31/00	6/3/03 68 FR 33002	(c)(53)
Table 45–10B	[Allowable Percent Sulfur Content of Fuels]	8/31/00	6/3/03 68 FR 33002	(c)(53)
[45 CSR] Series 11 Prevention of Air Pollution Emergency Episodes				
Section 45–11–1	General	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–11–2	Definitions	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–11–3	Episode Criteria	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–11–4	Methods of Measurement	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–11–5	Preplanned Reduction Strategies	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–11–6	Emission Reduction Plans	4/25/90	6/28/93 58 FR34526	(c)(28)
Table I	Emission Reduction Plans-Alert Level	4/25/90	6/28/93 58 FR34526	(c)(28)
Table II	Emission Reduction Plans-Warning Level	4/25/90	6/28/93 58 FR34526	(c)(28)
Table III	Emission Reduction Plans-Emergency Level	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–11–7	Air Pollution Emergencies; Contents of Order; Hearings; Appeals.	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–11–8	Inconsistency Between Regulations	4/25/90	6/28/93 58 FR34526	(c)(28)
[45 CSR] Series 12 Ambient Air Quality Standard for Nitrogen Dioxide				
Section 45–12–1	General	6/1/00	10/7/02 67 FR 62378	(c)(49)
Section 45–12–2	Anti-Degradation Policy	6/1/00	10/7/02 67 FR 62378	(c)(49)
Section 45–12–3	Definitions	6/1/00	10/7/02 67 FR 62378	(c)(49)
Section 45–12–4	Ambient Air Quality Standard	6/1/00	10/7/02 67 FR 62378	(c)(49)
Section 45–12–5	Methods of Measurement	6/1/00	10/7/02 67 FR 62378	(c)(49)
[45 CSR] Series 13 Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation				
Section 45–13–1	General	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–2	Definitions	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–3	Reporting Requirements for Stationary Sources	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–4	Administrative Updates to Existing Permits	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–5	Permit Application and Reporting Requirements for Construction of and Modifications to Stationary Sources.	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–6	Determination of Compliance of Stationary Sources.	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–7	Modeling	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–8	Public Review Procedures	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–9	Public Meetings	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–10	Permit Transfer, Suspension, Revocation and Responsibility.	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–11	Temporary Construction or Modification Permits ...	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–12	Permit Application Fees	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–13	Inconsistency Between Rules	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–14	Statutory Air Pollution	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–15	Hazardous Air Pollutants	6/1/00	2/28/03 68 FR 9559	(c)(52)
Table 45–13A	Potential Emission Rate	6/1/00	2/28/03 68 FR 9559	(c)(52)
Table 45–13B	De Minimus Sources	6/1/00	2/28/03 68 FR 9559	(c)(52)
[45 CSR] Series 14 Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration				
Section 45–14–1	General	6/1/05	11/2/06 71 FR 64470	SIP effective date is 12/ 04/06.
Section 45–14–2 (Except: 14–2.17, 14–2.40.i, 14–2.46.d.2, 14–2.46.g, and 14–2.56).	Definitions	6/1/05	11/2/06 71 FR 64470	SIP effective date is 12/ 04/06.

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR § 52.2565
Section 45–14–3 (Except: 4–3.4.e, 14–3.4.f (part), and 14–3.6).	Applicability	6/1/05	11/2/06 71 FR 64470	New Section. SIP effective date is 12/04/06.
Section 45–14–4	Ambient Air Quality Increments and Ceilings	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–3; SIP effective date is 12/04/06.
Section 45–14–5	Area Classification	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–4; SIP effective date is 12/04/06.
Section 45–14–6	Prohibition of Dispersion Enhancement Techniques.	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–5; SIP effective date is 12/04/06.
Section 45–14–7	Registration, Report and Permit Requirements for Major Stationary Sources and Major Modifications.	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–6; SIP effective date is 12/04/06.
Section 45–14–8	Requirements Relating to Control Technology	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–7; SIP effective date is 12/04/06.
Section 45–14–9	Requirements Relating to the Source's Impact on Air Quality.	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–8; SIP effective date is 12/04/06.
Section 45–14–10	Modeling Requirements	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–9.
Section 45–14–11	Air Quality Monitoring Requirements	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–10; SIP effective date is 12/04/06.
Section 45–14–12	Additional Impacts Analysis Requirements	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–11; SIP effective date is 12/04/06.
Section 45–14–13	Additional Requirements and Variances for Sources Impacting Federal Class I Areas.	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–12; SIP effective date is 12/4/06.
Section 45–14–14	Procedures for Sources Employing Innovative Control Technology.	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–13; SIP effective date is 12/4/06.
Section 45–14–15	Exclusions From Increment Consumption	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–14; SIP effective date is 12/4/06.
Section 45–14–16	Specific Exemptions	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–15; SIP effective date is 12/4/06.
Section 45–14–17	Public Review Procedures	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–16; SIP effective date is 12/04/06.
Section 45–14–18	Public Meetings	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–17; SIP effective date is 12/4/06.
Section 45–14–19 (except part of 19–19.8).	Permit Transfer, Cancellation, and Responsibility	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–18; SIP effective date is 12/4/06.
Section 45–14–20	Disposition of Permits	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–19; SIP effective date is 12/4/06.
Section 45–14–21	Conflict with Other Permitting Rules	6/1/05	11/2/06 71 FR 64470	Formerly Section 45–14–20; SIP effective date is 12/4/06.
Section 45–14–25	Actuals PALs	6/1/05	11/2/06 71 FR 64470	New Section. SIP effective date is 12/4/06.
Section 45–14–26	Inconsistency Between Rules	6/1/05	11/2/06 71 FR 64470	New Section. SIP effective date is 12/4/06.
[45 CSR] Series 19 Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment				
Section 45–19–1	General	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR § 52.2565
Section 45–19–2 (Except: 19–2.16, 19–2.33.c.8, 19–2.39.b.2.C, 19–2.39.b.5, and 19–2.53).	Definitions	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–3 (Except: 19–3.4.e, 19–3.4.f (part), and 19–3.6).	Applicability	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–4	Conditions for a Permit Approval for Proposed Major Sources that Would Contribute to a Violation of NAAQS.	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–5	Conditions for Permit Approval for Sources Locating In Attainment or Unclassifiable Areas that Would Cause a New Violation of a NAAQS.	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–7	Baseline for Determining Credit for Emission Offsets.	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–8	Location of Emissions Offsets	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–9	Administrative Procedures for Emission Offset Proposals.	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–12	Reasonable Further Progress	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–13	Source Impact Analysis	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–14	Permit Requirements for Major Stationary Sources and Major Modifications.	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–15	Public Review Procedures	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–16	Public Meetings	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–17 (Except part of 19–17.4).	Permit Transfer, Cancellation and Responsibility	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–18	Disposition of Permits	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–19	Requirements for Air Quality Models	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–23	Actuals PAL	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–24	Conflict with Other Permitting Rules	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Section 45–19–25	Inconsistency Between Rules	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Table 45–19A	No Title [Table of Significance Levels]	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
Table 45–19B	Averaging Time (hours)	6/1/05	11/2/06 71 FR 64468	SIP effective date is 12/4/06.
[45 CSR] Series 20 Good Engineering Practice as Applicable to Stack Heights				
Section 45–20–1	General	7/14/89	4/19/94 59 FR 18489	(c)(27)
Section 45–20–2	Definitions	7/14/89	4/19/94 59 FR 18489	(c)(27)
Section 45–20–3	Standards	7/14/89	4/19/94 59 FR 18489	(c)(27)
Section 45–20–4	Public Review Procedures	7/14/89	4/19/94 59 FR 18489	(c)(27)
Section 45–20–5	Inconsistency Between Regulations	7/14/89	4/19/94 59 FR 18489	(c)(27)
[45 CSR] Series 21 Regulation to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds				
Section 45–21–1	General	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–2	Definitions	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–3	Applicability	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–4	Compliance Certification, Recordkeeping, and Reporting Procedures for Coating Sources.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–5	Compliance Certification, Recordkeeping, and Reporting Requirements for Non-Coating Sources.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–6	Requirements for Sources Complying by Use of Control Devices.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–7	Circumvention	7/7/93	2/1/95 60 FR 6022	(c)(33)

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR § 52.2565
Section 45–21–8	Handling, Storage, and Disposal of Volatile Organic Compounds (VOCs).	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–9	Compliance Programs, Registration, Variance, Permits, Enforceability.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–11	Can Coating	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–12	Coil Coating	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–14	Fabric Coating	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–15	Vinyl Coating	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–16	Coating of Metal Furniture	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–17	Coating of Large Appliances	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–18	Coating of Magnet Wire	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–19	Coating of Miscellaneous Metal Parts	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–21	Bulk Gasoline Plants	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–22	Bulk Gasoline Terminals	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–23	Gasoline Dispensing Facility—Stage I Vapor Recovery.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–24	Leaks From Gasoline Tank Trucks	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–25	Petroleum Refinery Sources	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–26	Leaks From Petroleum Refinery Equipment	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–27	Petroleum Liquid Storage in External Floating Roof Tanks.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–28	Petroleum Liquid Storage in Fixed Roof Tanks	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–29	Leaks From Natural Gas/Gasoline Processing Equipment.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–31	Cutback and Emulsified Asphalt	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–39	Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–41	Test Methods and Compliance Procedures: General Provisions.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–42	Test Methods and Compliance Procedures: Determining the Volatile Organic Compound (VOC) Content of Coatings and Inks.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–43	Test Methods and Compliance Procedures: Alternative Compliance Methods for Surface Coating.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–44	Test Methods and Compliance Procedures: Emission Capture and Destruction or Removal Efficiency and Monitoring Requirements.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–45	Test Methods and Compliance Procedures: Determining the Destruction or Removal Efficiency of a Control Device.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–46	Test Methods and Compliance Procedures: Leak Detection Methods for Volatile Organic Compounds (VOCs).	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–47	Performance Specifications for Continuous Emissions Monitoring of Total Hydrocarbons.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–48	Quality Control Procedures for Continuous Emission Monitoring Systems (CEMS).	7/7/93	2/1/95 60 FR 6022	(c)(33)
Appendix A	VOC Capture Efficiency	7/7/93	2/1/95 60 FR 6022	(c)(33)
[45 CSR] Series 26	**NO_X Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides From Electric Generating Units**			
Section 45–26–1	General	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–2	Definitions	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–3	Measurements, Abbreviations and Acronyms	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–4	NO_X Budget Trading Program Applicability	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–5	Retired Unit Exemption	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–6	NO_X Budget Trading Program Standard Requirements.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–7	Computation of Time	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–10	Authorization and Responsibilities of the NO_X Authorized Account Representative.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–11	Alternate NO_X Authorized Account Representative	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–12	Changing the NO_X Authorized Account Representative and the Alternate NO_X Authorized Account Representative; Changes in Owners and Operators.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–13	Account Certificate of Representation	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–14	Objections Concerning the NO_X Authorized Account Representative.	5/1/02	5/10/02 67 FR 31733	(c)(46)

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR § 52.2565
Section 45–26–20	General NO_X Budget Trading Program Permit Requirements.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–21	NO_X Budget Permit Applications	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–22	Information Requirements for NO_X Budget Permit Applications.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–23	NO_X Budget Permit Contents	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–24	NO_X Budget Permit Revisions	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–30	Compliance Certification Report	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–31	Secretary's and Administrator's Action on Compliance Certifications.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–40	State NO_X Trading Program Budget	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–41	Timing Requirements for State NO_X Allowance Allocations.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–42	State NO_X Allowance Allocations	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–43	Compliance Supplement Pool	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–50	NO_X Allowance Tracking System Accounts	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–51	Establishment of Accounts	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–52	NO_X Allowance Tracking System Responsibilities of NO_X Authorized Account Representative.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–53	Recordation of NO_X Allowance Allocations	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–54	Compliance	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–55	NO_X Allowance Banking	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–56	Account Error	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–57	Closing of General Accounts	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–60	Submission of NO_X Allowance Transfers	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–61	Allowance Transfer Recordation	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–62	Notification	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–70	General Monitoring Requirements	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–71	Initial Certification and Recertification Procedures	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–72	Out of Control Periods	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–73	Notifications	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–74	Recordkeeping and Reporting	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–75	Petitions	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–76	Additional Requirements to Provide Heat Input Data.	5/1/02	5/10/02 67 FR 31733	(c)(46)
[45 CSR] Series 29	**Rule Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions**			
Section 45–29–1	General	7/7/93	8/4/95 60 FR 39855	(c)(34)
Section 45–29–2	Definitions	7/7/93	8/4/95 60 FR 39855	(c)(34)
Section 45–29–3	Applicability	7/7/93	8/4/95 60 FR 39855	(c)(34)
Section 45–29–4	Compliance Schedule	7/7/93	8/4/95 60 FR 39855	(c)(34)
Section 45–29–5	Emission Statement Requirements	7/7/93	8/4/95 60 FR 39855	(c)(34)
Section 45–29–6	Enforceability	7/7/93	8/4/95 60 FR 39855	(c)(34)
Section 45–29–7	Severability	7/7/93	8/4/95 60 FR 39855	(c)(34)
[45 CSR] Series 35	**Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)**			
Section 45–35–1	General	5/1/95	9/5/95 60 FR 46029	(c)(37)
Section 45–35–2	Definitions	5/1/95	9/5/95 60 FR 46029	(c)(37)
Section 45–35–3	Adoption of Criteria, Procedures and Requirements.	5/1/95	9/5/95 60 FR 46029	(c)(37)
Section 45–35–4	Requirements	5/1/95	9/5/95 60 FR 46029	(c)(37)

(d) *EPA approved state source-specific requirements.*

EPA-APPROVED SOURCE SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	Additional explanation/citation at 40 CFR § 52.2565
Mountaineer Carbon Co	Consent Order	7/2/82	9/1/82 47 FR 38532	(c)(18)
National Steel Corp.—Weirton Steel Division	Consent Order (Bubble)	7/6/82	12/9/82 47 FR 55396	(c)(19)

EPA-APPROVED SOURCE SPECIFIC REQUIREMENTS—Continued

Source name	Permit/order or registration number	State effective date	EPA approval date	Additional explanation/citation at 40 CFR § 52.2565
Columbia Gas Transmission Corporation—Lost River Station.	Consent Order	9/12/90	4/24/91 56 FR 18733	(c)(24)
Wheeling-Pittsburgh Steel Corp	Consent Order CO–SIP–91–29	11/14/91	7/25/94 59 FR 37696	(c)(26)
Standard Lafarge	Consent Order CO–SIP–91–30	11/14/91	7/25/94 59 FR 37696	(c)(26)
Follansbee Steel Corp	Consent Order CO–SIP–91–31	11/14/91	7/25/94 59 FR 37696	(c)(26)
Koppers Industries, Inc	Consent Order CO–SIP–91–32	11/14/91	7/25/94 59 FR 37696	(c)(26)
International Mill Service, Inc	Consent Order CO–SIP–91–33	11/14/91	7/25/94 59 FR 37696	(c)(26)
Starvaggi Industries, Inc	Consent Order CO–SIP–91–34	11/14/91	7/25/94 59 FR 37696	(c)(26)
Quaker State Corporation	Consent Order CO–SIP–95–1	1/9/95	11/27/96 61 FR 60191.	(c)(35)
Weirton Steel Corporation	Consent Order CO–SIP–95–2	1/9/95	11/27/96 61 FR 60191.	(c)(35)
PPG Industries, Inc	Consent Order CO–SIP–2000–1	1/25/00	8/2/00 65 FR 47339	(c)(44)(i)(B)(*1*)
Bayer Corporation	Consent Order CO–SIP–2000–2	1/26/00	8/2/00 65 FR 47339	(c)(44)(i)(B)(*2*)
Columbian Chemicals Company	Consent Order CO–SIP–2000–3	1/31/00	8/2/00 65 FR 47339	(c)(44)(i)(B)(*3*)
PPG Industries, Inc	Consent Order CO–SIP–C–2003–27.	7/29/03	4/28/04 69 FR 23110	(c)(58)
Wheeling-Pittsburgh Steel Corporation	Operating Permit R13–1939A	8/19/03	05/05/04 69 FR 24986.	(c)(59)(i)(B)(*1*)
Weirton Steel Corporation	Consent Order, CO–SIP–C–2003–28.	8/4/03	05/05/04 69 FR 24986.	(c)(59)(i)(B)(*2*)

* * * * *

[FR Doc. E7–3318 Filed 2–27–07; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0603 FRL–8114–9]

2-Propenoic Acid, Methyl Ester, Polymer with Ethenyl Acetate, Hydrolyzed, Sodium Salts; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts (CAS Reg. No. 886993–11–9) when used as an inert ingredient in a pesticide chemical formulation. MonoSol, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts.

DATES: This regulation is effective February 28, 2007. Objections and requests for hearings must be received on or before April 30, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0603. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Bipin Gandhi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: *gandhi.bipin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may

also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0603 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 30, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0603, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 26, 2006 (71 FR 42393) (FRL–8079–5), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 6E7085) by MonoSol, LLC, 1701 County Line Road, Portage, IN 46368. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts; CAS Reg. No. 886993–11–9. That notice included a summary of the petition prepared by the petitioner. There were no comments in response to the notice of filing.

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

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymer, 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, sodium, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or

reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts meet all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts is 36,200 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' EPA does not have, at this time, available data to determine whether 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts and any other substances and 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VII. Additional Safety Factor for the Protection of Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VIII. Determination of Safety

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts is an endocrine disruptor.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts from the requirement of a tolerance will be safe.

XI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045,

entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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.'' This rule 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 rule.

XII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 14, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

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

Authority: 1 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960 the table is amended by alphabetically adding a polymer to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

Polymer	CAS No.
* * * * *	
2-Propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts..	886993–11–9
* * * * *	

[FR Doc. E7–3118 Filed 2–27–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0321; FRL–8115–8]

Sethoxydim; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of sethoxydim {2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one }and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as sethoxydim) in or on buckwheat grain, buckwheat flour, okra, borage seed, borage meal, fresh dillweed leaves, radish tops, turnip greens, and vegetable, root and tuber, group 1. Interregional Research Project No. 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective February 28, 2007. Objections and requests for hearings must be received on or before April 30, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0321. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday,

excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6463; e-mail address: *Madden.Barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0321 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 30, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0321, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

II. Background and Statutory Findings

In the **Federal Register** of July 5, 2006 (71 FR 38154) (FRL–8074–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 0E6204 and 4E6885) by IR-4, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petitions requested that 40 CFR 180.412 be amended by establishing tolerances for combined residues of the herbicide sethoxydim {2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one} and its metabolites containing the 2-cyclohexen-1-one moiety in or on turnip tops at 5.0 parts per million (ppm) (PP 0E6204) and buckwheat, grain at 20 ppm; buckwheat, flour at 20 ppm; borage; seed at 5.0 ppm; borage, meal at 40 ppm; borage, oil at 40 ppm; dill, fresh leaves at 10 ppm; dill, dried leaves at 10 ppm; okra at 4.0 ppm; vegetable root, except sugar beet, group 1B at 4.0 ppm; and radish tops at 5.0 ppm (4E6885). That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, that is available in EPA's electronic docket. There were no comments received in response to the notice of filing.

Upon completing review of the current sethoxydim database, the Agency concluded that the appropriate tolerance levels and preferred commodity terms for sethoxydim residues in or on pending crops should be established as follows: Buckwheat, grain at 19 ppm; buckwheat, flour at 25 ppm; okra at 2.5 ppm; borage, seed at 6.0 ppm; borage, meal at 10 ppm; dillweed, fresh leaves at 10 ppm; radish, tops at 4.5 ppm; turnip, greens at 5.0 ppm and Vegetable, root and tuber, group 1 at 4.0 ppm. Vegetable, root and tuber, group 1 incorporates both the request for vegetable root, except sugar beet, group 1B at 4.0 ppm and existing tolerances for carrot, roots at 1.0 ppm; horseradish at 4.0 ppm; beet, garden at 1.0 ppm; beet, sugar, root at 1.0 ppm; and tuberous and corm vegetable subgroup 1D at 4.0 ppm. Turnip, greens replaces the term turnip tops. In addition, the proposed tolerance for borage oil was withdrawn because no separate tolerance is required since oil is covered by the borage seed tolerance and the proposed tolerance for dill, dried leaves was withdrawn because no separate tolerance is required since dried dillweed is covered by the fresh dillweed tolerance.

EPA is also deleting several established tolerances in section 180.412(a) that are no longer needed as a result of this action. The revisions to section 180.412(a) are as follows: Delete beet, garden at 1.0 ppm; beet, sugar, roots at 1.0 ppm; carrot, roots at 1.0 ppm; horseradish at 4.0 ppm; and tuberous and corm vegetable crop subgroup at 4.0 ppm. All of these tolerances are replaced with vegetable, root and tuber, group 1 at 4.0 ppm.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm* and *http://www.epa.gov/fedrgstr/EPA-PEST/2003/July/Day-30/p19357.htm.*

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety on buckwheat, grain at 19 ppm; buckwheat, flour at 25 ppm; okra at 2.5 ppm; borage, seed at 6.0 ppm; borage, meal at 10 ppm; dillweed, fresh leaves at 10 ppm; radish, tops at 4.5 ppm; turnip, greens at 5.0 ppm and vegetable, root and tuber, group 1 at 4.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by sethoxydim as well as the no-observed-adverse-effect-level (the NOAEL) and the lowest-observed-adverse-effect-level (the LOAEL) from the toxicity studies can be found in the final rule published in the **Federal Register** of September 29, 2003 (68 FR 55858) *(http://www.epa.gov/EPA-PEST/2003/September/Day-29/p24562.htm).*

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which the (NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the (LOAEL) of concern are identified is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/health/human.htm.*

A summary of the toxicological endpoints for sethoxydim used for human risk assessment can be found at www.regulations.gov in document 0003 (page 9) in Docket ID EPA–HQ–OPP–2006–0321. To locate this information on the Regulations.gov website follow these steps:

Select ''Advanced Search'', then ''Docket Search.''

In the ''Keyword'' field type the chemical name or insert the applicable ''Docket ID number.'' (example: EPA–HQ–OPP–2005–9999).

Click the ''Submit''button.

Follow the instructions on the regulations.gov web site to view the index for the docket and access available documents.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.412) for the combined residues of sethoxydim and its 2-cyclohexen-1-one moiety containing metabolites, in or on a variety of raw agricultural commodities. Tolerances have also been established for combined residues of sethoxydim in or on milk, egg, and fat, meat, and meat byproducts of cattle, goat, hog, horse, poultry and sheep. Risk assessments were conducted by EPA to assess dietary exposures from sethoxydim in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

In conducting the acute dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: For all proposed new uses and for all commodities in Vegetable, root and tuber, group 1, tolerance level residues and 100 percent crop treated (PCT) were assumed. For the remaining crops with existing tolerances available maximum PCT values were used. Tolerance level residues were assumed for most crops except for grapes, oranges, potatoes, tomatoes, strawberries, apples, pears and other pome fruits where anticipated residues were calculated through the incorporation of field trial data. Empirical processing data for apples, grapes, tomatoes, potatoes and oranges were used, and were sometimes translated to other members of the crop group. For livestock commodities, the available PCT information was incorporated into the dietary burden calculation and the feeding studies were used to determine the appropriate residue level, however at least one food item in each diet was assumed to be 100 PCT. PCT information was incorporated into the acute exposure and risk assessments through use of probabilistic risk assessment model.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM™ software with the Food Commodity Intake Database, which incorporates food consumption data as reported by respondents in the United States Department of Agriculture

(USDA) 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: For the proposed new uses and all commodities in Vegetable, root and tuber, group 1 tolerance level residues and 100% CT were assumed. For most of the crops with existing tolerances, tolerance level residues and average PCT values were assumed. PCT data for some livestock feeds were incorporated into the calculations of the theoretical dietary burdens for livestock, which were then used in conjunction with the available feeding studies to determine the anticipated residues in livestock commodities.

iii. *Cancer*. The Agency has classified sethoxydim as not likely to be a human carcinogen based on lack of evidence of carcinogenicity in rats and mice. Therefore, a cancer dietary exposure assessment was not performed

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such Data Call-Ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such Data Call-Ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information for the chronic dietary risk assessment as follows: 1% apples, 1% apricots, 6% globe artichokes, 5% asparagus, 14% dry beans, 9% lima beans, 8% snap beans, 5% garden beet tops, 1% broccoli, 5% cabbage, 8% cantaloupes, 2% cauliflower, 1% cherries, 2% collards, 1% corn, 1% cotton, 8% cranberries, 6% cucumbers, 5% eggplants, 38% flax, 1% grapes, 1% grapefruits, 5% lemons, 1% lettuce, 1% nectarines, 3% oranges, 2% succulent peas, 14% dry peas, 1% peaches, 5% peanuts, 1% pears, 3% bell peppers, 6% nonbell peppers, 4% potatoes, 8% pumpkins, 4% rapeseed, 6% rhubarb, 2% soybeans, 1% spinach, 8% summer squash, 5% strawberry, 14% sunflower, 4% tomatoes, 5% turnip greens, and 12% watermelons.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available Federal, State, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of five percent except for those situations in which the average PCT is less than one. In those cases <1% is used as the average and <2.5% is used as the maximum. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available federal, state, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of five percent. In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent six years.

The Agency believes that the three conditions listed III.C.1.iv. have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which sethoxydim may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for sethoxydim in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of sethoxydim. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Screening Tool Reservoir (FIRST) and Screening Concentration in Groundwater (SCI-GROW) models, the estimated environmental concentrations (EECs) of sethoxydim for acute exposures are estimated to be 130 parts per billion (ppb) for surface water and 1.5 ppb for ground water. The EECs for chronic exposures are estimated to be 16 ppb for surface water and 1.5 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 130 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 16 ppb was used to assess the contribution to drinking water.

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

Sethoxydim is currently registered for use on the following residential non-dietary sites: Ornamentals and flowering

plants, recreational areas, rights-of-way, along fences and hedgerows, and public and commercial buildings/structures (non-agricultural-outdoors). The risk assessment was conducted using the following residential exposure assumptions: Homeowners who apply sethoxydim to ornamental gardens and turf may be exposed for short-term (up to 30 days) durations via the dermal and inhalation routes. Short-term post application exposures to children may result from incidental oral contact via hand-to-mouth, turf-to-mouth, and soil-to-mouth activities with treated turf. No dermal toxicity endpoints were identified, therefore, only exposure from inhalation (adult handlers) and incidental ingestion (children) were assessed. For short-term and intermediate-term aggregate exposure, the inhalation exposures estimated for adult handlers cannot be combined with dietary exposure due to lack of common toxicity via the oral [transitory clinical signs: Irregular gait at doses of 650 milligrams/kilogram (mg/kg) and 1,000 mg/kg and inhalation (hepatotoxicity)] routes of exposure. Therefore, only short-term aggregate exposures from incidental ingestion for children via hand-to-mouth, turf-to-mouth, and soil-to-mouth activities with treated turf were assessed.

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to sethoxydim and any other substances and sethoxydim does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that sethoxydim has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. Since there is evidence of increased susceptibility of the young following exposure to sethoxydim in the rat developmental study and the rat reproduction study, the EPA performed a Degree of Concern Analysis to: 1. Determine the level of concern for the effects observed when considered in the context of all available toxicity data; and 2. Identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment of this chemical. If residual uncertainties are identified, EPA examines whether these residual uncertainties can be addressed by a special FQPA safety factor and, if so, the size of the factor needed. The results of Degree of Concern analysis for sethoxydim are presented as follows:

The degree of concern is low for the fetal effects in the developmental rat study since the fetal anomalies were seen only at the high dose (650 mg/kg/day) which is close to the Limit Dose (1,000 mg/kg/day), they were seen in the presence of maternal toxicity (irregular gait) and clear NOAELs/LOAELs were established for maternal and developmental toxicities.

EPA has determined that the degree of concern was low for prenatal and/or postnatal toxicity resulting from exposure to sethoxydim toxicity.

3. *Conclusion*. In the final rule published in the **Federal Register** of September 29, 2003 (68 FR 55858) (FRL–7328–6) (*http://www.epa.gov/EPA-PEST/2003/September/Day-29/p24562.htm*). EPA retained the additional 10X FQPA safety factor in the form of a Data base Uncertainty Factor because EPA had required submission of subchronic and developmental neurotoxicity studies due to various clinical signs in the rat developmental study and evidence of developmental abnormalities in the rat developmental and reproductive studies. In December of 2004, the EPA revisited the requirement for the subchronic and developmental neurotoxicity studies and determined that the evidence does not support the need for neurotoxicity studies for the reasons discussed below.

First, EPA concluded that the clinical signs seen in the rat developmental study were not neurotoxicity. The clinical signs following sethoxydim exposure in that study were irregular gait, decreased activity, excessive salivation, and anogenital staining. These effects were only observed in animals receiving very high doses of sethoxydim (650 mg/kg/day and 1,000 mg/kg/day). Irregular gait was observed in 12/24 dams at 650 mg/kg/day and 10/10 dams at 1,000 mg/kg/day on the first day of dosing, after 3 doses the signs began to dissipate. Decreased activity was noted in 1/34 dams at 650 mg/kg/day and in 4/10 dams at 1,000 mg/kg/day and reversed after several days. Excessive salivation was noted in 23/34 dams at 650 mg/kg/day and 10/10 dams at 1,000 mg/kg/day. Anogenital staining was documented in 13/34 dams at 650 mg/kg/day and 7/10 dams at 1,000 mg/kg/day. All clinical signs reported were transient, with the exception of the anogenital staining which did not reverse. Because the clinical signs occurred shortly after dosing, only occurred at very high treatment doses (over one half the limit dose) and were transitory, it is unlikely that the signs observed are the result of a primary systemic effect on the nervous system but, rather, are reflective of the general toxicity at the high dose. It should be noted that clinical signs indicative of nervous system effects were not observed in any other standard toxicity study for sethoxydim. Although none of these other studies dosed up to 650 and 1,000 mg/kg/day, a maximum tested dose was reached because of evidence of other toxicities (e.g., liver effects or body weight reductions).

Second, EPA found that there were no developmental effects seen in the rat and rabbit prenatal studies indicative of an effect on the nervous system. The main effect seen in the rat and rabbit prenatal studies was an increased incidence of fetal skeletal variations due

to delayed ossification. In the rat prenatal study, tail abnormalities (filamentous tail or lack of a tail) were noted. These abnormalities were observed at a very low incidence (10 fetuses in 7 litters, 650 milligrams/kilogram/body weight/day (mg/kg/bwt/day and at high treatment doses (650 and 1,000 mg/kg/day). In the 2-generation reproduction study in rat, a tail anomaly (short, thread-like tail, no anal opening, hindlimbs curved toward central midline) was found in one pup in the F2b generation (1/344 total pups; in 1/4 litters). Tail abnormalities are sometimes thought to relate to central nervous system (CNS) malformations; however, in this case, these tail abnormalities are not likely to be the result of a primary neurotube effect. In the rat prenatal study, there is no description of any effect on neural tube derived structures. Furthermore, the class of compounds, cyclohexones (which sethoxydim is a member), do not demonstrate neurotoxicity or developmental malformations of the nervous system.

Therefore, after a weight-of-evidence examination of all the toxicological studies available in the data base, the previous requirement for a neurotoxicity studies have been waived.

In light of its finding that neurotoxicity studies are not needed, EPA has now determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

1. The toxicity database for sethoxydim is complete.

2. There is no indication that sethoxydim is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors to account for neurotoxicity.

3. Although there is qualitative evidence of increased susceptibility in the prenatal developmental studies in rats and rabbits, the risk assessment team did not identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment for sethoxydim. The degree of concern for pre-and/or postnatal toxicity is low.

4. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on tolerance level residues and 100 PCT for all proposed new uses and for all commodities in Vegetable, root and tuber, group 1. For most of the remaining crops available maximum PCT treated values were used for acute dietary assessment and average PCT values were assumed for chronic dietary assessment. Tolerance level residues were assumed for crops with existing tolerances or anticipated residues were calculated through the incorporation of field trial data. Conservative ground and surface water modeling estimates were used. Similarly conservative Residential SOPs were used to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by sethoxydim.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (''aPAD'') and chronic population adjusted dose (''cPAD''). The aPAD and cPAD are calculated by dividing the LOC by all applicable uncertainty/safety factors. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-term, intermediate, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (''MOE'') called for by the product of all applicable uncertainty/safety factors is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to sethoxydim will occupy 11% of the aPAD for the U.S. population, 7.2% of the aPAD for females 13 years and older, 14% of the aPAD for all infants (<1 year old), and 20% of the aPAD for children 1-2 years old, the subpopulation at greatest exposure

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to sethoxydim from food and water will utilize 6.9% of the cPAD for the U.S. population, 15% of the cPAD for all infants (<1 year old), and 16% of the cPAD for children 1-2 years old, the subpopulation at greatest exposure. Based on the use pattern, chronic residential exposure to residues of sethoxydim is not expected.

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

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water and residential exposures aggregated result in aggregate MOEs of 5,700 for children/toddlers 1-2 years of age. Since this is the subpopulation with the highest estimated food and water exposures and the calculated MOE of 5,700 is substantially greater than the target MOE of 100 EPA has no concern for short-term aggregate risk for other subpopulations as well.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Though residential exposure could occur with the use of sethoxydim intermediate-term exposures are not expected. Only risks associated with short-term exposures of up to 30 days were assessed.

5. *Aggregate cancer risk for U.S. population*. The Agency has classified sethoxydim as not likely to be a human carcinogen based on lack of evidence of carcinogenicity in rats and mice. Sethoxydim is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas-liquid chromatography with flame photometric detection in the sulfur mode) is available BASF Wyandotte Corporations' (BWCs) Method No. 30, 3/15/82; MRID 44864501; Method I, PAM II to enforce the tolerance expression for the purpose of this request.

B. International Residue Limits

There are currently no Codex maximum residue levels for sethoxydim.

V. Conclusion

Therefore, the tolerance is established for combined residues of sethoxydim {2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one}and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as sethoxydim), in or on buckwheat, grain at 19 ppm; buckwheat, flour at 25 ppm; okra at 2.5 ppm; borage, seed at 6.0 ppm; borage, meal at 10 ppm; dillweed, fresh leaves

at 10 ppm; radish, tops at 4.5 ppm; turnip, greens at 5.0 ppm and vegetable, root and tuber, group 1 at 4.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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.'' This rule 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 rule.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 13, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.412 is amended in paragraph (a), in the table, by removing the commodities ''Beet, garden'', ''Beet, sugar, roots'', ''Carrot, roots'' ''Horseradish'', and ''Tuberous and corm vegetable crop subgroup''; and alphabetically adding commodities to read as follows:

§180.412 Sethoxydim: Tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Borage, meal	10
Borage, seed	6.0
Buckwheat, flour	25
Buckwheat, grain	19
* * * * *	
Dillweed, fresh leaves	10
* * * * *	
Okra	2.5

Commodity	Parts per million
* * * * *	
Radish, tops	4.5
* * * * *	
Turnip, greens	5.0
* * * * *	
Vegetable, root and tuber, group 1	4.0

[FR Doc. E7–3010 Filed 2–27–07; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0205; FRL–8113–8]

Halosulfuron-methyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of halosulfuron-methyl in or on the commodities alfalfa, forage at 1.0 parts per million (ppm) and alfalfa, hay at 2.0 ppm. Gowan Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The Agency is also correcting the tolerance expression for 40 CFR 180.479(a)(1) with this regulation. The tolerance expression is being corrected because the metabolites were inadvertently deleted from the most recent edition of 40 CFR 180.479.

DATES: This regulation is effective February 28, 2007. Objections and requests for hearings must be received on or before April 30, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0205. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Vickie Walters, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5704; e-mail address: *walters.vickie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0205 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 30, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0205, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of December 20, 2006 (71 FR 76321) (FRL–8104–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F2469) by Gowan Company, P. O. Box 5569, Yuma, AZ 85366. The petition requested that 40 CFR 180.479(a)(2) be amended by establishing a tolerance for residues of the herbicide halosulfuron methyl, methyl 5-[(4, 6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate in or on the raw agricultural commodities alfalfa, forage at 1.0 ppm and alfalfa, hay at 2.0 ppm. The Agency also proposed that the tolerance expression for 40 CFR 180.479(a)(1) be corrected to read ''Tolerances are established for residues of the herbicide halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidiny)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-caboxylate, and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid, expressed as halosulfuron-methyl equivalents in or on the raw agricultural commodities listed in the table in this unit.'' That notice referenced a summary of the petition prepared by Gowan Company, the registrant that has been included in the public docket. There were no comments received in response to the notice of filing.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of halosulfuron-methyl the commodities alfalfa, forage at 1.0 ppm and alfalfa, hay at 2.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by halosulfuron-methyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document 0002 (pages 16–20) in docket ID number EPA–HQ–OPP–2006–0205.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/health/human.htm*.

A summary of the toxicological endpoints for halosulfuron-methyl used for human risk assessment can be found at *http://www.regulations.gov*. in document 0002 (pages 34–35) in docket ID number EPA–HQ–OPP–2006–0205.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been established (40 CFR 180.479) for the residues of halosulfuron-methyl, in or on a variety of raw agricultural commodities. Tolerances have been established for halosulfuron-methyl and its metabolites determined as 3-chlore-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid, expressed as halosulfuron-methyl equivalents in or on meat by products of cattle, goat, hog, horse, and sheep. Risk assessments were conducted by EPA to assess dietary exposures from halosulfuron-methyl in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In conducting the acute dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by

Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues and 100 percent crop treated (PCT) for all existing and proposed uses. Percent crop treated or anticipated residues were not used.

The acute dietary exposure estimates are provided for females 13–50 years old only. The existing data showed no indication that halosulfuron-methyl could cause adverse effects in the general population based upon a single dose. Thus there is no concern for acute dietary exposure to the general population.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the DEEM-FCID™, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A chronic dietary analysis for halosulfuron-methyl was conducted using tolerance level residues and 100 PCT for all existing and proposed uses. Percent crop treated or anticipated residues were not used.

iii. *Cancer*. Halosulfuron-methyl is classified as a ''not likely'' human carcinogen based on a lack of evidence of carcinogenicity in male and female mice and rats following long-term dietary administration. Therefore, halosulfuron-methyl is not expected to pose a cancer risk for humans.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for halosulfuron-methyl in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of halosulfuron-methyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index*.

Based on the FQPA Index Reservoir Screening Tool (FIRST) and screening concentration in ground water (SCI-GROW) models, the estimated environmental concentrations (EECs) of halosulfuron-methyl for acute exposures are estimated to be 105 parts per billion (ppb) for surface water and 0.065 ppb for ground water. The EECs for chronic exposures are estimated to be 105 ppb for surface water and 0.065 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID). For acute and chronic dietary risk assessment, the annual average concentration of 105 ppb was used to access the contribution to drinking water.

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

Halosulfuron-methyl is currently registered for use on the following residential non-dietary sites: Application to commercial and residential turf and on other non-crop sites including airports, cemeteries, fallow areas, golf courses, landscaped areas, public recreation areas, residential property, roadsides, school grounds, sod or turf seed farms, sports fields, and landscaped areas with established woody ornamentals. Application may be by commercial applicator or homeowner. Residential handlers may receive short-term dermal and inhalation exposure to halosulfuron-methyl when mixing, loading, and applying the formulations. Adults and children may be exposed to halosulfuron-methyl residues through dermal contact with turf during postapplicaton activities. A residential exposure and risk assessment was previously conducted for these exposure scenarios. Combined margins of exposure (MOEs) for adults' and children's dermal exposure and toddlers' incidental exposure from all residential activities are greater than the Agency's LOC of 100, and therefore are not of concern. These risk assessments are fully discussed in Unit III.E.3. of a final rule published in the **Federal Register** of September 20, 2002 (67 FR 59182) (FRL–7200–8).

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to halosulfuron-methyl and any other substances and halosulfuron-methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that halosulfuron-methyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1.*In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor (SF) value based on the use of traditional UFs and/or special FQPA SFs, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no evidence of increased susceptibility of young rats in the reproduction study with halosulfuron-methyl. Although there is qualitative evidence of increased susceptibility in the prenatal developmental studies in rats and rabbits, the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of halosulfuron-methyl.

3. *Conclusion*. EPA determined that the 10X SF to protect infants and children should be removed. The FQPA factor is reduced to 1X based on the following findings.

i. The toxicity database for halosulfuron-methyl is complete. Although EPA previously required

submission of a developmental neurotoxicity, that requirement has been waived based on a review of the entire database including recently submitted acute and subchronic neurotoxicity studies. This review showed that there was no evidence of clinical signs of neurotoxicity, brain weights changes, or neuropathology in the subchronic (including the neurotoxicity study) or chronic studies in rats, mice, or dogs. The acute neurotoxicity study showed some minor, transient functional observational battery (FOB) effects on day 0 (none statistically significant) at the limit dose with no effects persisting past day 0. There were not effects on brain weights or neuropathology. The observed FOB effects are not considered attributable to a direct neurotoxic response as they are minor, transient and occurred at the limit dose.

ii. There is no evidence of increased susceptibility of young rats in the reproduction study with halosulfuron-methyl. Although there is qualitative evidence of increased susceptibility in the prenatal developmental studies in rats and rabbits, the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of halosulfuron-methyl. The degree of concern for pre and/or postnatal toxicity is low.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance level residues. Conservative ground water and surface water modeling estimates were used in the risk assessments. Agency Residential standard operational proceedures (SOPs) are used to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by halosulfuron-methyl.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. The acute aggregate risk assessment is provided for females 13–50 years old only. The existing data showed no indication that halosulfuron-methyl could cause adverse effects in the general population based upon a single dose. Thus there is no concern for acute dietary exposure to the general population. Using the exposure assumptions discussed in this Unit III.C. for acute exposure, the acute dietary exposure from food and water to halosulfuron-methy will occupy 1.0% of the acute Population Adjusted Dose (aPAD) for females 13 years and older. EPA does not expect the acute aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk*. Using the exposure assumptions described in Unit III.C. for chronic exposure, EPA has concluded that exposure to halosulfuron-methyl from food and water will utilize 3.0% of the chronic Population Adjusted Dose (cPAD) for the U.S. population, 8.0 of the cPAD for all infants (<1 year old), and 4.0% of the cPAD for children 1–2 years old and children 3–5 years old. Based the use pattern, chronic residential exposure to residues of halosulfuron-methyl is not expected. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Halosulfuron-methyl is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for halosulfuron-methyl.

A short-term risk assessment is required for adults because there is a residential handler exposure scenario. In addition, a short-term risk assessment is required for infants and children because there is a residential post-application exposure scenario for infants and children.

Using the exposure assumptions described in Unit III.C. for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs ranging from 2,400 to 4,400. The MOE for the U.S. population is 4,300. The most highly exposed subgroup was all infants (less than 1 year old with an MOE of 2,400. These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food and residential uses. EPA does not expect short-term aggregate exposure to exceed the Agency's LOC.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Halosulfuron-methyl is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for halosulfuron methyl.

An intermediate-term risk assessment is required for adults because there is a residential handler exposure scenario. In addition, an intermediate-term risk assessment is required for infants and children because there is a residential post-application exposure scenario for infants and children.

As an additional protective measure, residential handler exposures were included in the intermediate-term aggregate risk assessment, although residential exposure over the intermediate-term (more than 30 days) is unlikely.

Using the exposure assumptions described is Unit III.E. for intermediate-term exposures; EPA has concluded that food and residential exposures aggregated result in aggregate MOEs ranged from 480 to 560. The MOEs for the U.S. population is 480. The most highly exposed children's subgroup was all infants (less than 1 year old) with a MOE of 560. These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food and residential uses. EPA does not expect intermediate-term aggregate exposure to exceed the Agency's LOC.

5. *Aggregate cancer risk for U.S. population*. Halosulfuron-methyl is classified as ''not likely to be carcinogenic to humans'' based on the lack of evidence for carcinogenicity in mice and rats following long-term dietary administration. Therefore halosulfuron-methyl is not expected to pose a cancer risk for humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with a nitrogen specific detector) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican maximum residue levels (MRLs) for halosulfuron-methyl in or on alfalfa, forage or alfalfa, hay. International harmonization is therefore not an issue.

V. Conclusion

Therefore, the tolerance is established for residues of halosulfuron methyl, methyl 5-[(4, 6-dimethoxy-2-pyrimidinyl)amino]

carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate in or on the raw agricultural commodities alfalfa, forage at 1.0 ppm and alfalfa, hay at 2.0 ppm (40 CFR 180.479(a)(2)). The Agency is also correcting the tolerance expression for 40 CFR 180.479(a)(1) to read ''Tolerances are established for residues of the herbicide halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidiny)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-caboxylate, and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid, expressed as halosulfuron-methyl equivalent, in or on the raw agricultural commodities listed in the table in this unit.''

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''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.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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.'' This rule 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 rule.

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: February 14, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.479 is amended by revising the introductory text of paragraph (a)(1) and alphabetically adding commodities to the table in paragraph (a)(2) to read as follows:

§180.479 Halosulfuron-methyl; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the herbicide halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidiny)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-caboxylate, and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid, expressed as halosulfuron-methyl equivalent in or on the raw agricultural commodities listed in the table in this unit.

* * * * *

(2) * * *

Commodity	Parts per million
Alfalfa, forage	1.0
Alfalfa, hay	2.0
* * *	* *

* * * * *

[FR Doc. E7–3205 Filed 2–27–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0010; FRL–8113–4]

Orthosulfamuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of orthosulfamuron in or on rice, grain and rice, straw at 0.05 parts per million (ppm). ISAGRO S.p.A., Centro Uffici S. Siro — Fabbricato D — ALA 3, Via Caldera, 21, 20153 Milano, Italy, requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective February 28, 2007. Objections and requests for hearings must be received on or before April 30, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0010. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0010 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 30, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–0010, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 27, 2005 (70 FR 43421) (FRL–7727–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F 6957) by ISAGRO S.p.A., Centro Uffici S. Siro — Fabbricato D — ALA 3, Via Caldera, 21, 20153 Milano, Italy. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the herbicide orthosulfamuron in or on rice, grain and rice, straw at 0.05 ppm. That notice referenced a summary of the petition prepared by ISAGRO S.p.A., Centro

Uffici S. Siro — Fabbricato D — ALA 3, Via Caldera, 21, 20153 Milano, Italy, the registrant, that is included in the public docket. There were no comments received in response to the notice of filing.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA–PEST/1997/November/Day–26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of orthosulfamuron in or on rice, grain and rice, straw at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by orthosulfamuron as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document 0002 (pages 38–44) in docket ID number EPA–HQ–OPP–2007–0010.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://docket.epa.gov/edkpub/index.jsp*.

A summary of the toxicological endpoints for orthosulfamuron used for human risk assessment can be found at *http://www.regulations.gov* in document 2 (pages 19–20) in docket ID number EPA–HQ–OPP–2007–0010.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Risk assessments were conducted by EPA to assess dietary exposures from orthosulfamuron in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for orthosulfamuron; therefore, a quantitative acute dietary exposure assessment was not performed.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The chronic analysis is based on tolerance level residues and 100% of the crop treated.

iii. *Cancer*. Orthosulfamuron is classified as demonstrating ''suggestive evidence of carcinogenicity'' based on thyroid follicular cell adenomas observed in male rats. The Agency has concluded that quantification of human cancer risk is not warranted and the NOAEL selected for the chronic reference dose (cRfD) is protective of cancer effects.

iv. *Anticipated residue and percent crop treated (PCT) information*. The chronic dietary exposure analysis was based on tolerance level residues and 100 PCT assumptions.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for orthosulfamuron in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of orthosulfamuron. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://docket.epa.gov/edkpub/index.jsp*

Based on the interim rice model and screening concentration in groundwater (SCI-GROW) models, the estimated environmental concentration (EECs) of orthosulfamuron in drinking water for chronic exposures is estimated to be 40.5 parts per billion (ppb) for surface water and 0.611 ppb for groundwater.

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

Orthosulfamuron is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether

to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to orthosulfamuron and any other substances and orthosulfamuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that orthosulfamuron has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no concern for increased quantitative and/or qualitative susceptibility after exposure to orthosulfamuron in developmental toxicity studies in rats and rabbits, or a reproduction study in rats. In the developmental studies, there was no treatment-related maternal or developmental toxicity observed. In the reproduction study, decreased motor activity was seen in 6–week old males (F1) at 354.5 milligrams/kilograms/day (mg/kg/day). However, the offspring effects were observed in the presence of maternal toxicity (kidney lesions), seen in adult females of both generations (F0 and F1). The NOAEL (5 mg/kg/day) selected for the cRfD is lower (70X) than the dose at which the motor activity was observed and; thus, considered protective of the effects.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for orthosulfamuron is complete.

ii. There is no indication that orthosulfamuron is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that orthosulfamuron results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. Conservative groundwater and surface water modeling estimates were used. Similarly conservative. These assessments will not underestimate the exposure and risks posed by orthosulfamuron.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. Review of applicable toxicity studies indicated that orthosulfamuron is not expected to pose an acute risk.

2. *Short-term risk*. Orthosulfamuron is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

3. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be background exposure level).

Orthosulfamuron is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

4. *Chronic risk*. EPA considers chronic aggregate risk to consist of risks resulting from exposure to residues in food, drinking water, and residues resulting from residential applications. As there are no residential uses for orthosulfamuron, chronic aggregate risk consists of risks resulting from exposure to residues in food and drinking water alone, which do not exceed the Agency's LOC.

5. *Aggregate cancer risk for U.S. population*. The long-term chronic risk assessment outlined in this unit is considered to be protective of cancer effects.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate high performance liquid chromatography-mass spectrometry analytical method for enforcement purposes is available. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft Meade, Maryland 20755–5350. Telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

No Codex maximum residue limits (MRLs) have been established for residues of orthosulfamuron on any crops at this time.

V. Conclusion

Therefore, the tolerance is established for residues of orthosulfamuron, in or on rice, grain and rice, straw at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, 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). This final rule does not contain any information collections

subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''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.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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.'' This rule 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 rule.

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: February 16, 2007.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.625 is added to read as follows:

§180.625 Orthosulfamuron; tolerances for residues.

(a) *General.* Tolerances are established for residues of orthosulfamuron 1-(4,6-dimethoxypyrimidin-2-yl)-3-[2-(dimethylcarbamoyl)- phenylsulfamoyl] urea) *per se* in or on the following commodities:

Commodity	Parts per million
Rice, grain	0.05
Rice, straw	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect and inadvertant residues.* [Reserved]

[FR Doc. 07–898 Filed 2–23–07; 2:13 pm]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AI92

Migratory Bird Permits; Take of Migratory Birds by the Armed Forces

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Migratory Bird Treaty Act (MBTA) prohibits the taking, killing, or possessing of migratory birds unless permitted by regulations promulgated by the Secretary of the Interior. While some courts have held that the MBTA does not apply to Federal agencies, in July 2000, the United States Court of Appeals for the District of Columbia Circuit ruled that the prohibitions of the MBTA do apply to Federal agencies, and that a Federal agency's taking and killing of migratory birds without a permit violated the MBTA. On March 13, 2002, the United States District Court for the District of Columbia ruled that military training exercises of the Department of the Navy that incidentally take migratory birds without a permit violate the MBTA.

On December 2, 2002, the President signed the 2003 National Defense Authorization Act (Authorization Act). Section 315 of the Authorization Act provides that, not later than one year after its enactment, the Secretary of the Interior (Secretary) shall exercise his/her authority under Section 704(a) of the MBTA to prescribe regulations to exempt the Armed Forces for the

incidental taking of migratory birds during military readiness activities authorized by the Secretary of Defense or the Secretary of the military department concerned. The Authorization Act further requires the Secretary to promulgate such regulations with the concurrence of the Secretary of Defense. The Secretary has delegated this task to the U.S. Fish and Wildlife Service (Service).

In passing the Authorization Act, Congress itself determined that allowing incidental take of migratory birds as a result of military readiness activities is consistent with the MBTA and the treaties. With this language, Congress clearly expressed its intention that the Armed Forces give appropriate consideration to the protection of migratory birds when planning and executing military readiness activities, but not at the expense of diminishing the effectiveness of such activities. This rule has been developed by the Service in coordination and cooperation with the Department of Defense and the Secretary of Defense concurs with the requirements herein.

Current regulations authorize permits for take of migratory birds for activities such as scientific research, education, and depredation control (50 CFR parts 13, 21 and 22). However, these regulations do not expressly address the issuance of permits for incidental take. As directed by Section 315 of the Authorization Act, this rule authorizes such take, with limitations, that result from military readiness activities of the Armed Forces. If any of the Armed Forces determine that a proposed or an ongoing military readiness activity may result in a significant adverse effect on a population of a migratory bird species, then they must confer and cooperate with the Service to develop appropriate and reasonable conservation measures to minimize or mitigate identified significant adverse effects. The Secretary of the Interior, or his/her designee, will retain the power to withdraw or suspend the authorization for particular activities in appropriate circumstances.

DATES: This rule is effective March 30, 2007.

ADDRESSES: The final rule and other related documents can be downloaded at *http://migratorybirds.fws.gov*. The complete file for this rule is available for inspection, by appointment, during normal business hours at the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, Virginia 22203, telephone 703–358–1714.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, telephone 703–358–1714.

SUPPLEMENTARY INFORMATION:

Background

Migratory birds are of great ecological and economic value and are an important international resource. They are a key ecological component of the environment, and they also provide immense enjoyment to millions of Americans who study, watch, feed, or hunt them. Recognizing their importance, the United States has been an active participant in the internationally coordinated management and conservation of migratory birds. The Migratory Bird Treaty Act (16 U.S.C. 703–712) (MBTA) is the primary legislation in the United States established to conserve migratory birds. The U.S. Fish and Wildlife Service (Service), is the Federal agency within the United States responsible for administering and enforcing the statute.

The MBTA, originally passed in 1918, implements the United States' commitment to four bilateral treaties, or conventions, for the protection of a shared migratory bird resource. The original treaty upon which the MBTA was based was the Convention for the Protection of Migratory Birds, signed with Great Britain in 1916 on behalf of Canada for the protection ''of the many species of birds that traverse certain parts of the United States and Canada in their annual migration.'' The MBTA was subsequently amended after treaties were signed with Mexico (1936, amended 1972, 1997), Japan (1972), and Russia (1976), and the amendment of the treaty with Canada (1995).

While the terms of the treaties vary in their particulars, each treaty and subsequent amendments impose substantive obligations on the United States for the conservation of migratory birds and their habitats. For example, the Canada treaty, as amended, includes the following conservation principles:

- To manage migratory birds internationally;
- To ensure a variety of sustainable uses;
- To sustain healthy migratory bird populations for harvesting needs;
- To provide for, maintain, and protect habitat necessary for the conservation of migratory birds; and
- To restore depleted populations of migratory birds.

The Canada and Mexico treaties protect selected families of birds, while the Japan and Russia treaties protect selected species of birds. All four treaties provide for closed seasons for hunting game birds. The list of the species protected by the MBTA appears in title 50, section 10.13, of the Code of Federal Regulations (50 CFR 10.13).

Under the MBTA, it is unlawful ''by any means or in any manner, to pursue, hunt, take, capture, [or] kill'' any migratory birds except as permitted by regulation (16 U.S.C. 703). The Secretary is authorized and directed, from time to time, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds to adopt suitable regulations permitting and governing the take of migratory birds when determined to be compatible with the terms of the treaties (16 U.S.C. 704). Furthermore, the regulations at 50 CFR 21.11 prohibit the take of migratory birds except under a valid permit or as permitted in the implementing regulations. The Service has defined ''take'' in regulation to mean to ''pursue, hunt, shoot, wound, kill, trap, capture, or collect'' or to attempt these activities (50 CFR 10.12).

On July 18, 2000, the United States Court of Appeals for the District of Columbia ruled in *Humane Society* v. *Glickman,* 217 F.3d 882 (D.C. Cir. 2000), that Federal agencies are subject to the take prohibitions of the MBTA. The United States had previously taken the position, and two other courts of appeals held or suggested, that the MBTA does not by its terms apply to Federal agencies. See *Sierra Club* v. *Martin,* 110 F.3d 1551, 1555 (11th Cir. 1997); *Newton County Wildlife Ass'n* v. *U.S. Forest Service,* 113 F.3d 110, 115 (8th Cir. 1997). Subsequently, on December 20, 2000, we issued Director's Order 131 to clarify the Service's position that, pursuant to *Glickman,* Federal agencies are subject to the permit requirements of the Service's existing regulations.

Because the MBTA is a criminal statute and does not provide for citizen-suit enforcement, a private party who violates the MBTA is subject to investigation by the Service and/or prosecution by the Department of Justice. However, the Administrative Procedure Act (5 U.S.C. 551 et seq.) (APA) allows private parties to file suit to prevent a Federal agency from taking ''final agency action'' that is ''arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law'' (5 U.S.C. 706(2)(A)). If the prohibitions of the MBTA apply to Federal agencies, private parties could seek to enjoin Federal actions that take migratory birds, unless such take is authorized pursuant to regulations developed in

accordance with 16 U.S.C. 704, even when such Federal actions are necessary to fulfill Government responsibilities and even when the action poses no threat to the species at issue.

In *Center for Biological Diversity* v. *Pirie,* a private party obtained an injunction prohibiting live-fire military training exercises of the Department of the Navy that had the effect of killing some migratory birds on the island of Farallon de Medinilla (FDM) in the Pacific Ocean. On March 13, 2002, the United States District Court for the District of Columbia ruled that the Navy activities at FDM resulting in a take of migratory birds without a permit from the Service violated the MBTA and the APA (191 F. Supp. 2d. 161 and 201 F. Supp. 2d 113). On May 1, 2002, after hearing argument on the issue of remedy, the Court entered a preliminary injunction ordering the Navy to apply for a permit from the Service to cover the activities, and preliminarily enjoined the training activities for 30 days. The United States Court of Appeals for the District of Columbia Circuit stayed the District Court's preliminary injunction pending appeal. The preliminary injunction, and associated stay, expired on May 31, 2002. A permanent injunction was issued by the District Court on June 3, 2002. The Circuit Court also stayed this injunction pending appeal on June 5, 2002. On December 2, 2002, the President signed the Authorization Act creating an interim period during which the prohibitions on incidental take of migratory birds would not apply to military readiness activities. During the interim period, Congress also directed the Secretary of the Interior to develop regulations that exempt the Armed Forces from incidental take during authorized military readiness activities. The Department of Defense must concur with the regulations before they take effect. The Circuit Court subsequently dismissed the *Pirie* case as moot. In light of the *Glickman* and *Pirie* decisions, the authorization that this rule provides is essential to preserving the Service's role in determining what military readiness activities, if any, create an unacceptable risk to migratory bird resources and therefore must be modified or curtailed.

The Armed Forces are responsible for protecting the United States from external threats. To provide for national security, they engage in military readiness activities. ''Military readiness activity'' is defined in the Authorization Act to include all training and operations of the Armed Forces that relate to combat, and the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use. It includes activities carried out by contractors, when such contractors are performing a military readiness activity in association with the Armed Forces, including training troops on the operation of a new weapons system or testing the interoperability of new equipment with existing weapons systems. Military readiness does not include (a) the routine operation of installation operating support functions, such as: administrative offices; military exchanges; commissaries; water treatment facilities; storage facilities; schools; housing; motor pools; laundries; morale, welfare, and recreation activities; shops; and mess halls, (b) the operation of industrial activities, or (c) the construction or demolition of facilities listed above.

Section 315 of the 2003 National Defense Authorization Act (Pub. L. 107–314, 116 Stat. 2458, Dec. 2, 2002, *reprinted in* 16 U.S.C. 703 note) (hereinafter ''Authorization Act'') requires the Secretary of Defense, in consultation with the Secretary, to identify ways to minimize, mitigate, and monitor take of migratory birds during military readiness activities and requires the Secretary to prescribe, with the concurrence of the Secretary of Defense, a regulation that exempts military readiness activities from the MBTA's prohibitions against take of migratory birds. With the passage of the Authorization Act, Congress determined that such regulations are consistent with the MBTA and the underlying treaties by requiring the Secretary to promulgate such regulations. Furthermore, Congress clearly expressed its intention that the Armed Forces give appropriate consideration to the protection of migratory birds when planning and executing military readiness activities, but not at the expense of diminishing the effectiveness of such activities. Any diminishment in effectiveness could impair the ability of the Armed Forces to fulfill their national security mission. Diminishment could occur when military training or testing is modified in ways that do not allow the full range of training methods to be explored.

This rule authorizes the Armed Forces to take migratory birds incidental to military readiness activities, subject to certain limitations and subject to withdrawal of the authorization to ensure consistency with the provisions of the migratory bird treaties. The authorization provided by this rule is necessary to ensure that the work of the Armed Forces in meeting their statutory responsibilities can go forward. This rule is also appropriate and necessary to ensure compliance with the treaties and to protect a vital resource in accordance with the Secretary's obligations under Section 704 of the MBTA as well as under Section 315 of the Authorization Act. This rule will continue to ensure conservation of migratory birds as the authorization it provides is dependent upon the Armed Forces conferring and cooperating with the Service to develop and implement conservation measures to minimize or mitigate significant adverse effects to migratory birds. This rule has been developed by the Service in coordination and cooperation with the Department of Defense, and the Secretary of Defense concurs with the requirements herein.

Executive Order 13186

Migratory bird conservation relative to activities of the Department of Defense and the Coast Guard other than military readiness activities are addressed separately in Memoranda of Understanding (MOUs) developed in accordance with Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds, signed January 10, 2001. The MOU with the Department of Defense was published in the **Federal Register** August 30, 2006 (Volume 71, Number 168). Upon completion of the MOUs with additional Federal agencies, and in keeping with the intent of the Executive Order for Federal agencies to promote the conservation of migratory bird populations, the Service may issue incidental take authorization to address specific actions identified in the MOUs.

Responses to Public Comment

On June 2, 2004, we published in the **Federal Register** (69 FR 31074) a proposed rule to authorize the take of migratory birds, with limitations, that result from Department of Defense military readiness activities. We solicited public comment on the proposed rule for 60 days ending on August 2, 2004.

By this date, we received 573 comments in response to the proposed rule; 24 were from identified organizations or agencies. The following text discusses the substantive comments received and provides our response to those comments. Additionally, it provides an explanation of significant changes from the proposed rule. We do not specifically address the comments that simply opposed the rule unless they included recommendations for revisions. Comments are organized by topic.

To more closely track the language in the Authorization Act and to clarify that the rule applies to the incidental taking

of a migratory bird by a member of the Armed Forces during a military readiness activity, we have replaced the ''Department of Defense'' with ''Armed Forces,'' where applicable.

Violation of the Migratory Bird Treaty Act and the Four Migratory Bird Treaties

Comment: The statement that the rule allows take only in ''narrow instances'' of military readiness activities goes against the spirit and letter of the MBTA, which forbids the take of migratory birds and thus abrogates the MBTA.

Service Response: The MBTA regulates, rather than absolutely forbids, take of migratory birds. The Secretary is authorized and directed, from time to time, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds to adopt suitable regulations permitting and governing the take of migratory birds when determined to be compatible with the terms of the treaties (16 U.S.C. 704). In the Authorization Act, Congress directed the Secretary to utilize his/her authority to permit incidental take for military readiness activities. Furthermore, Congress itself by passing the Authorization Act determined that allowing incidental take of migratory birds as a result of military readiness activities is consistent with the MBTA and the treaties. Thus, this rule does not abrogate the MBTA.

Comment: Citing broad take authorization language in the current text of the treaty with Canada, concern was expressed regarding the analysis in the proposed rule that the treaty with Canada has a narrower focus than the treaties with Japan and Russia.

Service Response: We agree with the commenter that the Canada treaty, as amended by the 1995 Protocol, now includes broad exception language similar to that in the Japan and Russia treaties. We have expanded upon and added additional clarification in the section ''Is the rule consistent with the MBTA?'' discussing compatibility of this rule with the MBTA and the four treaties.

Authorization of Take Under § 21.15(a)

Comment: The Department of Defense should avoid take of migratory birds by avoiding areas inhabited by migratory birds including restricting construction and active use of airfields in the vicinity of wildlife refuges, prohibiting military operations over wildlife refuges or sensitive migratory bird habitat areas, and avoiding areas where migratory birds nest, breed, rest, and feed.

Service Response: Military lands often support a diversity of habitats and their associated species, including migratory birds; thus it would be difficult for the Armed Forces to completely avoid areas inhabited by birds or other wildlife species. When determining the location for a new installation, such as an airfield, the applicable Armed Force must prepare environmental documentation in accordance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.) (NEPA) that gives due consideration to the impacts of the proposal on the environment, including migratory birds. With respect to wildlife refuges, Congress in the 2000 amendments to the National Wildlife Refuge System Administration Act noted specifically that the provisions of the Act relating to determinations of the compatibility of a use would not apply to overflights above a refuge (Pub. L. 106–580; December 29, 2000). Nevertheless, as noted in this rule, the Armed Forces have made significant investments in acquiring data on the distribution of bird populations and identification of migration routes, as well as the use of military lands for breeding, stopover sites, and over-wintering areas, to protect and conserve these areas. The Armed Forces actively utilize radar ornithology to plan new construction and testing and training operations in areas and times of least constraints. The Armed Forces also have a strong interest in avoiding bird/aircraft conflicts and use this type of information to assist range planners in selecting training times when bird activity is low.

In accordance with the Sikes Act (included in Pub. L. 105–85), the Department of Defense must provide for the conservation and rehabilitation of natural resources on military installations. Thus, potential conflicts with natural resources, including migratory birds, should be addressed in Integrated Resource Management Plans (INRMP), where applicable. Although the Sikes Act does not apply to the Coast Guard, they are also starting to encourage applicable bases to develop INRMPs.

Comment: Provision should be included that the Department of Defense cannot ignore scientific evidence and proceed on a course of action where take is inevitable.

Service Response: None of the four treaties strictly prohibit the taking of migratory birds without exception. Furthermore, the Service acknowledges that regardless of the entity implementing an activity, some birds may be killed even if all reasonable conservation measures are implemented. With the passage of the Authorization Act, Congress directed the Secretary to authorize incidental take by the Armed Forces. Thus, they will be allowed to take migratory birds as a result of military readiness activities, consistent with this rule. This rule, however, will continue to ensure conservation of migratory birds as it requires the Armed Forces to confer and cooperate with the Service to develop and implement conservation measures to minimize or mitigate adverse effects to migratory birds when scientific evidence indicates an action may result in a significant adverse effect on a population of a migratory bird species.

As stated in the Principles and Standards section of this rule, the Armed Forces will use the best scientific data available to assess through the NEPA process, or other environmental requirements, the expected impact of proposed or ongoing military readiness activities on migratory bird species likely to occur in the action areas.

Comment: The Department of Defense should not have the sole authority/responsibility to determine whether the survival of the species is threatened, and only then initiate consultation with the Service.

Service Response: We assume that, despite the commenter's use of the term ''consultation'', this is a reference to the requirement under § 21.15(a)(1) to ''confer and cooperate,'' and not to the requirement of ''consultation'' under section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1536. Section 21.15(a)(1) does condition the requirement to ''confer and cooperate'' on a determination by the Armed Forces that a military readiness activity may result in a significant adverse effect on a population of a migratory birds species. However, we expect that the Armed Forces will notify the Service of any activity that even arguably triggers this requirement. In addition, putting aside the requirements of this regulation, the Armed Forces would, as a matter of course share such information in a number of circumstances.

First, NEPA, and its regulations at 40 CFR 1500–1508, require that Federal agencies prepare environmental impact statements for ''major Federal actions significantly affecting the quality of the human environment.'' These statements must include a detailed analysis of the impacts of an agency's proposed action and any reasonable alternatives to that proposal. NEPA also requires the responsible Federal official to ''consult

with and obtain comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.''

Second, the Sikes Act (16 U.S.C. 670a-670o), as amended in 1997, requires the development of INRMPs by the Department of Defense that reflect the mutual agreement of the Department of Defense, the Service, and the appropriate State wildlife agency. The Sikes Act has provided the Service, as well as the public, with an opportunity to review natural resources management on military lands, including any major conflicts with migratory birds or their habitat. NEPA documentation is also completed on new or revised INRMPs. Department of Defense policy requires installations to review INRMPs annually in cooperation with the Service and State resource agencies. Annual reviews facilitate adaptive management by providing an opportunity for the parties to review the goals and objectives of the plans and to evaluate any new scientific information that indicates the potential for adverse impacts on population of a migratory bird species from ongoing (or new) military readiness activities.

Third, if the military readiness activity may affect a species listed under the ESA, the Armed Forces would communicate with the Service to determine whether formal consultation is necessary under section 7 of the ESA.

If, as a result these formal processes or by any other mechanism the Service obtains information which raise concerns about the impacts of military readiness on migratory bird populations, the Service can request additional information from the Armed Services. Under section 21.15(b)(2)(iii), failure to provide such information can form the basis for withdrawal of the authorization to take migratory birds. In any case, based on this information, the Service can, under appropriate circumstances, suspend or withdraw the authorization even if the Armed Forces do not themselves determine that a military readiness activity may result in a significant adverse effect on a population of a migratory bird species.

Comment: The threshold for requiring the Department of Defense to confer with the Service when a ''significant adverse effect on the sustainability of a population of migratory bird species of concern'' is too high. This could allow significant damage to resources that could be avoided with criteria that are more stringent.

Service Response: We agree. We have modified the threshold to ''significant adverse effect on a population of migratory bird species.'' The definitions of ''population'' and ''significant adverse effect'' have also been modified accordingly in this rule.

Comment: The provision that the rule must be promulgated with the concurrence of the Secretary of Defense requires the regulator to get permission of the regulated agency.

Service Response: The 2003 Defense Authorization Act required that the regulation be developed with the concurrence of the Secretary of Defense. However, as indicated in § 21.15(b), we have the authority to withdraw authorization if it is determined that a proposed military readiness activity may be in violation of any of the migratory bird treaties or otherwise is not being implemented in accordance with this regulation.

Comment: Encourage more emphasis on upfront planning and evaluation of minimum-impact alternatives to foster more opportunities to avoid or mitigate impacts.

Service Response: As stated in this rule, the Department of Defense currently incorporates a variety of conservation measures into their INRMP documents to address migratory bird conservation. Additional measures will be developed in the future with all the Armed Forces in coordination with the Service and implemented where necessary to avoid, minimize, or mitigate significant adverse effects on migratory bird populations. This rule also indicates the Armed Forces shall engage in early planning and scoping and involve agencies with special expertise in the matters related to the potential impacts of a proposed action.

Comment: The proposed rule grants the Department of Defense greater authority to take and kill migratory birds than authorized in the Defense Authorization Act, which is the only statutory authority for the proposed rule and requires that the Department of Defense minimize and mitigate impacts to migratory birds.

Service Response: We do not agree that the rule provides greater authority to take birds than authorized in the Defense Authorization Act. What this rule does is provide clarity regarding the processes the Armed Forces are required to initiate to minimize and mitigate adverse impacts of authorized military readiness activities on migratory birds while ensuring compliance with the migratory bird treaties and meeting the Secretary's obligations under Section 704 of the MBTA.

Comment: The rule should require mitigation options be formally assessed and evaluated prior to undertaking the activity and that mitigation be commensurate with the extent of the impact.

Service Response: We agree that mitigation can be very complex both from the perspective of replicating all the ecosystem components that a species needs to successfully survive and reproduce regardless of whether mitigation is ex-situ or in-situ.

The Service's Mitigation Policy (Fish and Wildlife Service Manual, 501 FW 2) is designed to assist the Service in the development of consistent and effective recommendations to protect and conserve valuable fish and wildlife resources to help ensure that mitigation be commensurate with the extent of the impact.

In addition, as indicated in this rule, the Armed Forces will confer and cooperate with the Service to develop and implement conservation measures when an ongoing or proposed activity may have a significant adverse effect on a population of migratory bird species. The public, and the Service, also have the opportunity to review and comment on proposed military readiness activities in accordance with NEPA.

Comment: Section 21.15(a) of the proposed regulation must be revised to provide a system of oversight by the Service both in determining whether Department of Defense military readiness activities would likely adversely impact a migratory bird population and in setting a timeline for the implementation of conservation measures.

Service Response: As previously indicated, the Service and the public have the opportunity to review and comment on proposed military readiness activities in accordance with NEPA or other environmental review. Thus, we will be provided an opportunity to evaluate whether a proposed activity may have an adverse effect on migratory bird populations.

Comment: Pursuant to authority granted by 10 U.S.C. 101 and 14 U.S.C. 1, the U.S. Coast Guard is a branch of the armed forces of the USA at all times. Under this authority, the Coast Guard engages in military readiness activities. Furthermore, under the definition of ''Secretary of Defense,'' the Department of Homeland Security is included with respect to military readiness activities of the U.S. Coast Guard. The rule should be revised accordingly to reflect this.

Service Response: Section 315 of the Authorization Act provides for the Secretary ''to prescribe regulations to exempt the Armed Forces for the incidental taking of migratory birds during military readiness activities authorized by the Secretary of Defense or the Secretary of the military department concerned.'' We agree that

''Armed Forces'' includes the Coast Guard.

Comment: In order for potential impacts of the implementation of this rule to be effectively analyzed, the rule should not be categorically excluded. A full NEPA analysis should be conducted for the rule.

Service Response: Because of the broad spectrum of activities, activity locations, habitat types, and migratory birds potentially present that may be affected by this rule, it is not foreseeable or reasonable to anticipate all the potential impacts in a meaningful manner of military readiness activities conducted by the Armed Forces on the affected environment; thus it is premature to examine potential impacts of the rule in accordance with NEPA. We have determined that any environmental analysis of the rule would be too broad, speculative, and conjectural.

Part 516 Departmental Manual 2.3 A (National Environmental Policy Act Part 1508.4) allows an agency (Bureau) in the Department of Interior to determine if an action is categorically excluded from NEPA. We have made the determination that the rule is categorically excluded in accordance with 516 Departmental Manual 2, Appendix 1.10. This determination does not diminish the responsibility of the Armed Forces to comply with NEPA. Whenever the Armed Forces propose to undertake new military readiness activities or to adopt a new, or materially revised, INRMP where migratory bird species may be affected, the Armed Forces invite the Service to comment as an agency with ''jurisdiction by law or special expertise'' upon their NEPA analysis. In addition, if the potential for significant effects on migratory birds makes it appropriate, the Armed Forces may invite the Service to participate as a cooperating agency in the preparation of their NEPA analysis. Moreover, authorization under this rule requires that if a proposed military readiness activity may result in a significant adverse impact on a population of migratory bird species, the Armed Forces must confer and cooperate with the Service to develop and implement appropriate measures to minimize or mitigate these effects. The environmental consequences of the proposed military readiness activity, as well as the potential of any such measures to reduce the adverse impacts of the proposed activity, would be covered in NEPA documentation prepared for the proposed action.

Comment: Section 21.15(a) of the proposed regulation is unclear as to who is to determine that ongoing or proposed activities are likely to result in significant adverse effects.

Service Response: We have revised § 21.15(a) to clarify that this responsibility initially lies with the action proponent, i.e., the Armed Forces. Just as the Armed Forces make the initial determination that consultation is required under similar statutes, such as the Endangered Species Act (16 U.S.C. 1531 et seq.) (ESA) or the National Historic Preservation Act (16 U.S.C. 470), the action proponent will consider the likely effects of its proposed action and whether such effects require that it confer with the Service to develop and implement appropriate conservation measures to minimize or mitigate potential significant adverse effects. Where significant adverse impacts are likely, existing requirements under NEPA for federal agencies to prepare environmental documentation will ensure that both the public and the Service have an opportunity to review a proposed action and the Armed Force's determination with respect to migratory birds.

The Service and State wildlife agencies (and the general public if plan revisions are proposed) also have an opportunity to review the Department of Defense's management of installation natural resources, including the impacts of land use on such resources, during the quintennial review of INRMPs for Department of Defense lands. Consultation under the Endangered Species Act offers yet another opportunity for the Service to provide input on the potential effects of a proposed military readiness activity on federally listed migratory birds.

Comment: The document uses both the terms ''may'' affect migratory birds and ''likely'' to affect migratory birds. ''May'' should be used to be consistent with the NEPA threshold for impacts on the environment.

Service Response: The Service has intentionally established different standards for when the Armed Forces are required to confer with the Service and for when we may propose withdrawal of authorization. We have established a broad standard for triggering when the Armed Forces must notify the Service of potential adverse effects on migratory birds. We agree that requiring the Armed Forces to confer with the Service when applicable activities ''may'' result in a significant adverse effect is consistent with the analysis threshold utilized in NEPA. The Secretary determined that the more restrictive threshold of suspending or withdrawing authorization was warranted when a military readiness activity likely would not be compatible with one or more of the treaties or is likely to result in a significant adverse effect on a migratory bird population.

Withdrawal of Take Authorization § 21.15(b)

Comment: The Department of Defense is given too much decision power in the rule. Concern was expressed that the final decision regarding whether a military readiness activity is authorized or not is made by political appointees rather than unbiased career employees.

Service Response: Our political system is based upon a structure whereby policy decisions are made by political appointees rather than career employees. To address what may be perceived as too much power by the Armed Forces, it is the Secretary of the Interior who has, and retains, the final determination regarding whether an activity is authorized under the MBTA, not the Secretary of Defense.

Comment: The rule should require sufficient monitoring to detect significant impacts and provide for diligent oversight by the Department of the Interior to head off problems well before jeopardy is near and withdrawal of authorization is suspended or proposed to be withdrawn.

Service Response: We concur that monitoring can play a key role in providing valuable data needed to evaluate potential impacts of activities, inform conservation decisions, and evaluate effectiveness of conservation measures. For monitoring to be relevant, it should focus on specific objectives, desired outcomes, key hypotheses, and conservation measures. As stated in § 21.15(b)(2)(ii) of the rule, in instances where it is appropriate, the Armed Forces are required to ''conduct mutually agreed upon monitoring to determine the effects of military readiness activity on migratory bird species and/or the efficacy of the conservation measures implemented by the Armed Forces.'' This rule also states that the Armed Forces will consult with the Service to identify techniques and protocols to monitor impacts of military readiness activities. We have also added additional text clarifying the monitoring requirements of the Armed Forces.

Comment: The procedure for withdrawal of the authority is so cumbersome and subject to so many exclusions as to make the withdrawal procedure non-functional.

Service Response: We have clarified the procedures for when the Secretary may propose withdrawing authorization in § 21.15(b)(2), (4) and (5).

Comment: The statutory language of the Defense Authorization Act says

nothing about requiring input from the State Department prior to suspending authorization. Thus, the rule needlessly goes beyond its statutory authority.

Service response: In accordance with the MBTA (16 U.S.C. 704), the Secretary of the Interior has the authority to ''determine when, and to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow hunting, taking, capture, killing * * * and to adopt suitable regulations permitting and governing the same.'' The Defense Authorization Act does not limit that authority. Requiring the input of the State Department is within the standards of § 704.

Comment: The provision that the Secretary must seek the view of the Department of Defense prior to suspending authorization due to a violation with any of the treaties it affects permits the Department of Defense to itself determine its compliance with the migratory bird treaties. The statutory language of the Defense Authorization Act did not address this in any way.

Service Response: Section 21.15(b)(1) of this regulation provides that the Secretary retains the discretion to make the ultimate determination that incidental take of migratory birds during a specific military readiness activity would be incompatible with the treaties. Although the Defense Authorization Act required the Secretary to promulgate a regulation, it did not mandate the specific text or all of the conditions in this regulation. This regulation is consistent with the Defense Authorization Act as well as with 16 U.S.C. 704. Moreover, seeking the views of the Armed Forces is appropriate given the possible impacts that suspension of the take authorization could have on national security. Similarly, consulting with the State Department on issues of treaty interpretation is appropriate because of the State Department's expertise and authority in this area as well as its responsibility for maintaining the relationship of the United States with its treaty partners.

Comment: The Secretary should not have unilateral power to suspend or withdraw take authorization as the Defense Authorization Act states the Secretary must exercise authority with the concurrence of the Secretary of Defense.

Service Response: In accordance with § 315(d)(1) and (2) of the Authorization Act, the regulation ''to exempt the Armed Forces for the incidental take of migratory birds during military readiness activities'' shall be developed by the Secretary of the Interior with the concurrence of the Secretary of Defense. However, the Defense Authorization Act does not restrict or limit our authority in 16 U.S.C. 704 and 712 relative to administering and enforcing the MBTA and complying with the four migratory bird treaties.

Definitions § 21.3

Comment: Incidental take is not defined in the rule or the Defense Authorization Act. Concern was expressed that the Department of Defense being authorized to take migratory birds incidental to military readiness activities without ''incidental'' being defined will result in the Department of Defense reading this as the ability to actively kill migratory birds and destroy their habitat in anticipation of the potential for such problems.

Service Response: Current regulations authorize permits for take of migratory birds for activities such as scientific research, education, and depredation control (50 CFR parts 13, 21 and 22). However, these regulations do not expressly address the issuance of permits for incidental take. ''Incidental take of migratory birds'' is not defined under the MBTA or in any subsequent regulation, and the Service does not anticipate having a regulatory definition for ''incidental take'' in the short term. Neither the MBTA, the Defense Authorization Act, nor this rule authorize the take of migratory birds simply in anticipation of the potential for future problems, i.e., removing the potential source of problems before any conflicts may arise with military readiness activities.

Comment: Blanket exemption for any and all military readiness activities should not be authorized. In particular, those activities that involve acquisition of new land and construction of facilities in sensitive migratory bird habitat areas should not be authorized. Authorization to take birds should only include those types of activities that are too time or mission-sensitive for thorough evaluation, and where incidental take is unavoidable.

Service Response: As defined in the 2003 Defense Authorization Act, military readiness activities include all training and operations of the Armed Forces that relate to combat, and the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use. Military readiness does not include (a) routine operation of installation operating support functions, such as: administrative offices; military exchanges; commissaries; water treatment facilities; storage facilities; schools; housing; motor pools; laundries; morale, welfare, and recreation activities; shops; and mess halls, (b) operation of industrial activities, or (c) construction or demolition of facilities listed above.

Acquisition of lands by the Armed Forces is not covered by this authorization as the acquisition itself does not take birds even when the land is being acquired for implementing future military readiness activities. In accordance with NEPA, environmental analysis of any major Federal agency action, which may include land acquisition and future proposed activities on these lands, must be addressed prior to the action occurring. Likewise, construction of facilities in sensitive migratory bird habitat would be addressed through NEPA.

Comment: The rule covers all military branches of service and includes contractors and agents. These should be clearly delineated in order to minimize the number of exempt entities.

Service Response: The rule applies to contractors only when such contractors are performing a military readiness activity in association with the Armed Forces—i.e., the contractors are performing a federal function. For example, a contractor training troops on the operation of a new weapons system or testing its interoperability with existing weapons systems would be covered. The regulation does not cover routine contractor testing performed at an industrial activity that is privately owned and operated.

Comment: The Defense Authorization Act does not limit applicability of minimization and mitigation measures to just ''species of concern'' but applies to all ''affected species of migratory birds.'' In addition, concern was expressed that this level of threshold could result in avoidable impacts to species that are not included in the ''species of concern lists'' but are nevertheless valuable public resources.

Service Response: We agree that the Defense Authorization Act is not specifically limited to species of concern, nor did we envision that the rule prevents the Armed Forces from addressing adverse impacts on all affected species of migratory birds through the NEPA process, including those that are locally endemic or otherwise have limited distribution within a State. The rule has been modified by requiring the Armed Forces to confer with the Service when they determine an action may result in a significant adverse effect on the

population of any migratory bird species.

Comment: Use of population status at the Bird Conservation Region (BCR) level as a criterion for action could reduce consideration of locally important bird resources, concentrations of birds and special habitats, and populations that do not coincide closely with BCRs.

Service Response: We have revised the definition of population so that it is not based upon species distribution or occurrence within a Bird Conservation Region and thus eliminates the concerns expressed above. As used in the rule, a population is defined as ''a group of distinct, coexisting (conspecific) individuals of a single species, whose breeding site fidelity, migration routes, and wintering areas are temporally and spatially stable, sufficiently distinct geographically (at some time of the year), and adequately described so that the population can be effectively monitored to discern changes in its status.''

What constitutes a population for the purposes of determining potential effects of military readiness activities will be scientifically based. A population could be defined as one that occurs spatially across a geographically broad area, such as the Western Atlantic red knot population that migrates along the Atlantic seaboard, to a more geographically limited species, such as breeding population of Bicknell's thrush whose breeding range is limited to mountain tops in the northeastern U.S. and southeastern Canada. When requested, the Service will provide technical assistance to the Armed Forces in identifying specific populations of migratory bird species that may be affected by a military readiness activity.

Comment: The definition of conservation measure does not adequately recognize international treaty obligations and the right of the Secretary of the Interior to withdraw take authorization should the treaties be violated. In the definitions, after the words ''while allowing for completion of the action in a timely manner,'' insert ''if such action would be consistent with the international treaties underlying the MBTA.''

Service Response: If conservation measures implemented by the Armed Forces in accordance with the rule are not sufficient to render the action compliant with the treaties, the Secretary will suspend the authorization. Failure to implement conservation measures is not the sole criterion for proposing withdrawal.

Comment: ''Conservation measures'' is defined to include monitoring when it has the potential to produce data relevant to substantiating impacts, validating effectiveness of mitigation, or providing other pertinent information. However, in the absence of a monitoring requirement, this provision is unworkable.

Service Response: Monitoring is required in § 21.15(b)(ii) of the rule. This section indicates that the Department of Defense's failure ''to conduct mutually agreed upon monitoring to determine the effects of military readiness activity on migratory bird species and/or the efficacy of the conservation measures implemented by the Department of Defense'' is potential cause for the Secretary to propose withdrawing authorization. However, as indicated in the response below, reference to monitoring has been removed from the definition of conservation measures.

Comment: Monitoring should not be considered a conservation measure, rather it should be conducted separately and apart from any necessary and reasonable mitigation actions.

Service Response: Although monitoring can play a key role in the continued growth of bird conservation by providing the information needed to inform conservation decisions and evaluate their effectiveness, we have removed it from the definition of conservation measures.

Comment: The threshold of ''significant adverse effect on the sustainability of a population'' is too high.

Service Response: The threshold for when the Armed Forces will be required to confer with the Service and implement appropriate conservation measures has been modified to when a ''significant adverse effect on a population of migratory bird species'' may result from an ongoing or proposed military readiness activity. The definition of significant adverse effect has also been accordingly revised in the rule.

Comment: The rule has a different standard than what was indicated by Congress in the Defense Authorization Act. The Act indicates measures are to be identified that minimize and mitigate ''any adverse impacts'' not just ''significant adverse effects.'' The Service is inserting thresholds of both likelihood and significance that are not any way implied by the statute.

Service Response: As indicated in Section 315(b) of the Authorization Act, the identification of measures to minimize and mitigate *any adverse impacts* of authorized military readiness activities pertains to the period of interim authority. The standard for authorization of take is established by the Secretary's authority under § 704 of the MBTA, whereby in exercising this authority he/she may prescribe regulations that exempt the Armed Forces for the incidental taking of migratory birds during military readiness activities. As indicated in the rule, the Secretary established thresholds for granting authority to incidentally take migratory birds. For those military readiness activities that would not have a significant adverse effect on migratory bird species populations take is authorized without conferring with the Service, subject to the withdrawal provision of § 21.15(b)(1). If a proposed or ongoing activity may result in a significant adverse effect, the Armed Forces must confer and cooperate with the Service. Take authorization would be suspended or withdrawn only when a military readiness activity likely would not be compatible with one or more of the treaties or is likely to result in a significant adverse effect on a migratory bird population.

Comment: Conservation measures that are project designs or mitigation activities should be changed from those that are ''reasonable and feasible'' to ''reasonable and necessary.'' This will result in a conservation measure that is appropriate to its purpose and essential to conservation.

Service Response: This revision has been made to the definition of conservation measures.

Comment: ''Conservation measures'' fails to place any restrictions or requirements on the amount of time that the Department of Defense would be given to apply the mitigation actions. The phrase ''over time'' implicitly grants the Department of Defense the ability to ignore the need for immediate action to counter adverse impacts.

Service Response: ''Over time'' was deleted from the definition.

Supplementary Information Section

Many comments were received on the Supplementary section of the proposed rule which did not pertain to any recommended revisions to § 21.15. These were taken into consideration in the final rule.

Comment: Ambiguous terms such as ''should,'' ''encourage,'' ''anticipates,'' etc., relative to Department of Defense activities contributing towards the conservation of migratory birds should be replaced with stronger terms such as ''require.''

Service Response: The **SUPPLEMENTARY INFORMATION** text has no

regulatory force and thus use of stronger terms has no regulatory weight. However, this comment was given due consideration and several revisions were made to strengthen the measures the Armed Forces are currently undertaking to address migratory bird conservation. These terms are not applicable in the actual rule, and therefore, no revisions were made relative to the authorization in this regard.

Comment: Integrated Natural Resources Management Plans (INRMPs) as informal mechanisms may not provide prompt and diligent efforts to minimize permitted take of birds. State wildlife agencies encourage more rigorous and thorough planning requirements and offer their considerable expertise and assistance.

Service Response: The Sikes Act Improvement Act of 1997 (included in Pub. L. 105–85) requires the development and implementation of INRMPs for relevant Department of Defense installations and mandates that plans be prepared in cooperation with the Service and State fish and wildlife agencies. The purpose of INRMPs is to plan natural resource management activities within the capabilities of the biological setting to support military training requirements. Although the Sikes Act does not apply to the Coast Guard, the Coast Guard is also starting to encourage their bases to address natural resource activities through INRMPs. The Service has been and continues to be committed to expanding partnerships with the Department of Defense. Updated Department of Defense guidance stresses that installations shall work in cooperation with the Service and States while developing or revising INRMPs. Each installation will invite annual feedback from the Service and States concerning how effectively the INRMP is being implemented. Installations have also established and maintain regular communications with the Service and State fish and wildlife agencies to address issues concerning natural resources management including migratory birds.

The Sikes Act also offers opportunities beyond the INRMP process for States and the Service to offer their expertise and assistance on military lands and with respect to migratory birds. For example, under the Sikes Act, the Department of Defense can enter into cooperative agreements with the Service, States, and nonprofit organizations to benefit birds and other species. Programs such as the Chesapeake Bay Program, Coastal America, and Partners In Flight also offer opportunities to partner with States and to share information and advice.

Comment: If the Service must rely on INRMPs for monitoring and mitigation of bird take, we recommend a requirement to complete, revise, and update plans to address bird monitoring and assessment of military readiness impacts and that migratory bird conservation activities receive adequate funding.

Service Response: The Sikes Act and Department of Defense guidance provide mechanisms to address emerging needs related to bird monitoring and assessment of military readiness impacts. The Sikes Act requires INRMPs to be reviewed, and revised as necessary, as to operation and effect by the parties (i.e., the Service and State resource agencies) on a regular basis, but not less often than every 5 years. In October 2004, the Department of Defense issued supplemental guidance for implementation of the Sikes Act relating to INRMP reviews. Department of Defense policy requires installations to review INRMPs annually in cooperation with the Service and State resource agencies. Annual reviews facilitate adaptive management by providing an opportunity for the parties to review the goals and objectives of the plans and to establish a realistic schedule for undertaking proposed actions. During annual reviews of the INRMPs, the Department of Defense will also discuss with the Service conservation measures implemented and the effectiveness of these measures in avoiding, minimizing, or mitigating take of migratory birds.

This rule relies on the Armed Forces utilizing the NEPA process to determine whether any ongoing or proposed military readiness activity is likely to result in a significant adverse effect on a population of a migratory bird species. The rule requires the Armed Forces to develop and implement appropriate conservation measures if a proposed action may have a significant adverse effect on a population of migratory bird species. To ensure that such conservation measures adequately address impacts to migratory birds, the rule also requires the Armed Forces to monitor the effects of such military readiness activities on migratory bird species taken during the military readiness activities at issue, and to retain records of these measures and monitoring data for 5 years from the date the Armed Forces commence their action.

Comment: We do not believe that impacts addressed by this rule can be adequately monitored or remedied without commitment of more resources to gather new bird data, conduct additional efforts to monitor impacts, or spend more money.

Service Response: Although the rule requires the Armed Forces to conduct mutually agreed upon monitoring to determine the effects of a military readiness activity on migratory bird species and the efficacy of the conservation measures implemented by the Armed Forces, we cannot require the Armed Forces to provide additional funding or resources towards monitoring. However, we do agree that monitoring is an important component of activities the Armed Forces undertake to address migratory bird conservation. We have expanded the monitoring discussion under ''Rule Authorization'' below.

Comment: Concern was expressed that the proposed broad exemption will be perceived as precluding the need for full NEPA consideration for covered activities.

Service Response: As stated in this rule, the Armed Forces will continue to be responsible for being in compliance with NEPA, and all other applicable regulations, and ensuring that whenever they propose to undertake new military readiness activities or to adopt a new, or materially revised, INRMP and migratory bird species may be affected, the Armed Forces invite the Service to comment as an agency with ''jurisdiction by law or special expertise'' upon their NEPA analysis. In addition, if the potential for significant effects on migratory birds makes it appropriate, the Armed Forces may invite the Service to participate as a cooperating agency in the preparation of their NEPA analysis. Moreover, authorization under this rule requires that if a proposed military readiness activity may result in a significant adverse impact on a population of migratory bird species, the Armed Forces must confer and cooperate with the Service to develop and implement appropriate measures to minimize or mitigate these effects. The environmental consequences of the proposed military readiness activity, as well as the potential of any such measures to reduce the adverse effects of the proposed activity, would be covered in NEPA documentation prepared for the proposed action.

Comment: The Department of Defense should be required to demonstrate that all ''practicable'' means of avoiding the ''take'' of migratory birds have been considered prior to the implementation of a new readiness program or construction of a new installation.

Service Response: The Armed Forces will be addressing ''take'' in a variety of ways. As stated above, through the NEPA process, the environmental consequences of their proposed military readiness activities will be evaluated, as well as any measures to reduce take of migratory birds. In addition, the INRMPs currently incorporate conservation measures to address migratory bird conservation. The Service will continue to work with the Armed Forces to develop additional measures in the future.

Comment: Nowhere does the rule mention how and when the Department of Defense will assess current, ongoing activities for which NEPA compliance is complete. The rule should be amended to require, within a specified time period of 90–120 days, a report by the Department of Defense to the Secretary on the impacts of their current military readiness activities on migratory birds.

Service Response: As a preliminary matter, it is important to note that where NEPA compliance has been completed, that compliance should have included consideration of the impacts on migratory birds. Since the enactment of NEPA, the Service has been notified of, and provided the opportunity to comment on, proposed military readiness activities that have the potential for significant impacts on the environment, including significant impacts on migratory birds. Nevertheless, it is possible that ongoing military readiness activities might in the future be determined to meet the threshold for the requirement under § 21.15(a)(1) to ''confer and cooperate.'' There are at least three mechanisms in place that require the Armed Forces to address environment impacts of ongoing activities for which NEPA is complete; supplementary statements under NEPA, INRMP reviews, and the monitoring requirements in the rule.

In accordance with NEPA Part 1502.9, an agency shall prepare a supplement to either a draft or a final environmental impact statement whenever: (1) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (2) the agency learns of significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. This rule relies on the Armed Forces to use the NEPA process to determine whether an ongoing military readiness activity may result in a significant adverse effect on a population of a migratory bird species.

The Sikes Act (16 U.S.C. 670a–670o), enacted in 1960, has required cooperation among the Department of Defense, the Service, and State wildlife agencies. The 1997 amendments to the Sikes Act require the development of INRMPs that reflect the mutual agreement of the Department of Defense, the Service, and the appropriate State wildlife agency. The Sikes Act provides the Service, as well as the public, an opportunity to review natural resources management on military lands, including any potential effects on migratory birds or their habitat. NEPA documentation is prepared to support new or revised INRMPs. Department of Defense policy requires installations to review INRMPs annually in cooperation with the Service and State resource agencies. Annual reviews facilitate adaptive management by providing an opportunity for the parties to review the goals and objectives of the plans and to evaluate any new scientific information that indicates the potential for adverse impacts on migratory birds from new or ongoing military readiness activities. In addition, during annual INRMP reviews, the Department of Defense, the Service and the State resources agency evaluate the conservation measures implemented and the effectiveness of these measures in avoiding, minimizing, or mitigating take of migratory birds.

This rule requires the Armed Forces to develop and implement appropriate conservation measures if a proposed action may have a significant adverse effect on a population of migratory bird species. When conservation measures implemented in accordance with § 21.15(a)(1) require monitoring, the Armed Forces must retain records of these measures and monitoring data for 5 years from the date the Armed Forces commence their action.

Comment: We disagree with the interpretation of the statute that Congress ''signaled that the Department of Defense should give appropriate consideration to the protection of migratory birds when planning and executing military readiness activities, but not at the expense of diminishing the effectiveness of such activities.'' This suggests a diminishment of protection for migratory birds. It was Congress's intent that the Department of Defense should not be forced to halt these activities but rather should modify them to minimize impacts, or, if such activities cannot be practicably altered to minimize impacts, that mitigation measures must be in place to ensure conservation of migratory birds.

Service Response: This rule will not diminish the protection of migratory birds. Rather, by requiring the Armed Forces to confer with the Service to develop and implement conservation measures when a military readiness activity may significantly affect a population of a migratory bird species, a greater benefit to birds will result than the current status operandi. Increased coordination and technical assistance between the Service and the Armed Forces will reduce the number of migratory birds that are incidentally taken as a result of military readiness activities.

Measures Taken by the Armed Forces To Minimize and Mitigate Takes of Migratory Birds

As the basis for this rule, under the authority of the MBTA and in accordance with Section 315 of the Authorization Act, the Armed Forces will consult with the Service to identify measures to minimize and mitigate adverse impacts of authorized military readiness activities on migratory birds and to identify techniques and protocols to monitor impacts of such activities. The inventory, avoidance, habitat enhancement, partnerships, and monitoring efforts described below illustrate the efforts currently undertaken by the Armed Forces to minimize or mitigate adverse impacts to migratory birds from testing and training activities to maintain a ready defense. Additional conservation measures, designed to minimize and mitigate adverse impacts of authorized military readiness activities on affected migratory bird species, with emphasis on species of concern, will be developed in joint coordination with the Service when evaluation of specific military readiness activities indicates the need for additional measures.

We have a long history of working with natural resources managers at Armed Forces installations through our Field Offices to develop and implement these conservation initiatives. Many of the conservation measures detailed below represent state-of-the-art techniques and practices to inventory, protect, and monitor migratory bird populations. In accordance with provisions of the Sikes Act, as amended, these conservation measures are detailed in Department of Defense INRMPs for specific installations and endorsed by the Service and State fish and wildlife agencies. Additional conservation measures may be incorporated into future revisions of the INRMPs if determined necessary during their quintennial review.

Bird Conservation Planning. The Department of Defense prepares INRMPs for most Department of Defense installations. Under the Sikes Act, the Department of Defense must provide for the conservation and rehabilitation of natural resources on military

installations. To facilitate the program, the Secretary of Defense prepares and implements an INRMP for each military installation in the United States on which significant natural resources are found. The resulting plans must reflect the mutual agreement of the military installation, the Service, and the appropriate State fish and wildlife agency on conservation, protection, and management of fish and wildlife resources. The importance of a cooperative relationship among these parties is also stressed in Department of Defense and Service guidances concerning INRMP development and review. In accordance with the Department of Defense guidance, each installation will invite annual feedback from the Service and States concerning how effectively the INRMP is being implemented. Installations also maintain regular communications with the Service and State fish and wildlife agencies to address issues concerning natural resources management including migratory birds. Although the Sikes Act does not apply to the Coast Guard, they are also starting to encourage applicable bases to develop INRMPs.

INRMPs incorporate conservation measures addressed in Regional or State Bird Conservation Plans to ensure that the Department of Defense does its part in landscape-level management efforts. INRMPs are a significant source of baseline conservation information and conservation initiatives used to develop NEPA documents for military readiness activities. This linkage helps to ensure that appropriate conservation measures are incorporated into mitigation actions, where needed, that will protect migratory birds and their habitats.

To-date, over 370 INRMPs have been approved. Through cooperative planning in the development, review and revision of INRMPs, the Department of Defense, the Service and the States can effectively avoid or minimize adverse impacts on migratory bird populations. Through this process, the Service and the Department of Defense will continue to work together to design and develop monitoring surveys that effectively evaluate population trends and cumulative impacts on installations.

The Fish and Wildlife Conservation Act of 1980, as amended in 1988, directs the Secretary of the Interior to ''identify species, subspecies, and populations of all migratory non-game birds that, without additional conservation action, are likely to become candidates for listing under the Endangered Species Act of 1973.'' This list is prepared and updated at 5-year intervals by the Service's Division of Migratory Bird Management. The current list of the ''Birds of Conservation Concern'' is available at *http://migratorybirds.fws.gov/reports/bcc2002.pdf*.

''Birds of Conservation Concern 2002'' includes species that are of concern because of (a) documented or apparent population declines, (b) small or restricted populations, or (c) dependence on restricted or vulnerable habitats. It includes three distinct geographic scales: Bird Conservation Regions, Service Regions, and National. The Service Regions include the seven Service Regions plus the Hawaiian Islands and Puerto Rico/U.S. Virgin Islands.

Bird Conservation Regions (BCRs), adopted by the North American Bird Conservation Initiative (NABCI), are the most basic geographical unit by which migratory birds are designated as birds of conservation concern. The BCR list includes certain species endemic to Hawaii, the Pacific Island territories, and the U.S. Caribbean Islands that are not protected by the MBTA, and thus are not subject to this rule. These species are clearly identified in the list. The complete BCR list contains 276 species. NABCI is a coalition of U.S., Canadian, and Mexican governmental agencies and private organizations working together to establish an inclusive framework to facilitate regionally based, biologically driven, landscape-oriented bird conservation partnerships. A map of the NABCI BCRs can be viewed at *http://www.nabci-us.org*.

The comprehensive bird conservation plans, such as the North American Waterfowl Management Plan, the U.S. Shorebird Conservation Plan, Partners in Flight (PIF) Bird Conservation Plans, and the North American Waterbird Conservation Plan, are the result of coordinated partnership-based national and international initiatives dedicated to migratory bird conservation. Each of these initiatives has produced landscape-oriented conservation plans that lay out population goals and habitat objectives for birds. Additional information on these plans and their respective migratory bird conservation goals can be found at:

North American Waterfowl Management Plan (*http://birdhabitat.fws.gov/NAWMP/nawmphp.htm*).

North American Waterbird Conservation Plan (*http://www.waterbirdconservation.org*).

U.S. Shorebird Conservation Plan (*http://shorebirdplan.fws.gov/*).

Partners in Flight (*http://www.partnersinflight.org*).

Conservation Partnerships. The Department of Defense has entered into a number of conservation partnerships with nonmilitary partners to improve habitats and protect avian species. In 1991, the Department of Defense, through each of the military services, joined the PIF initiative. The Department of Defense developed a PIF Strategic Plan in 1994, and revised it in 2002. The Department of Defense PIF program is recognized as a model conservation partnership program. Through the PIF initiative, the Department of Defense works in partnership with over 300 Federal and State agencies and nongovernmental organizations (NGOs) for the conservation of neotropical migratory and resident birds and enhancement of migratory bird survival. For example, bases have worked with NGOs to develop management plans that address such issues as grazing and the conversion of wastewater treatment ponds to wetlands and suitable habitat. Universities use Department of Defense lands for migratory bird research and, on occasion, re-establish nesting pairs to take advantage of an installation's hospitable habitat. The Department of Defense PIF program tracks this research and provides links between complementary research on different installations and service branches.

The Authorization Act included a provision that allows the Department of Defense to provide property at closed bases to conservation organizations for use as habitat and another provision that, in order to lessen problems of encroachment, allows the Department of Defense to purchase conservation easements on suitable property in partnership with other groups. Where utilized, these provisions will offer further conservation benefits to migratory birds.

Bird Inventories. The most important factor in minimizing and mitigating takes of migratory birds is an understanding of when and where such takes are likely to occur. This means developing knowledge of migratory bird habits and life histories, including their migratory paths and stopovers as well as their feeding, breeding, and nesting habits.

The Department of Defense implements bird inventories and monitoring programs in numerous ways. Some Department of Defense installations have developed partnerships with the Institute for Bird Populations to Establish Monitoring Avian Productivity and Survivorship (MAPS) stations. The major objective of

the MAPS program is to contribute to an integrated avian population monitoring system for North American land birds by providing annual regional indices and estimates for four populations and demographic parameters for select target species in seven different regions of North America. The MAPS methodology provides annual regional indices of adult population size and post-fledgling productivity from data on the numbers and proportions of young and adult birds captured; annual regional estimates of adult population size, adult survivorship, and recruitment into the adult population from capture-recapture data on adult birds; and additional annual estimates of adult population size from point-count data collected in the vicinity of MAPS stations. Without these critical data, it is difficult or impossible to account for observed population changes. The Department of Defense is helping to establish a network of MAPS stations in all seven biogeographical regions and build the program necessary to monitor neotropical migratory bird population changes nationwide. Approximately 20% of the continental MAPS network involves military lands.

Since the early 1940s, radar has been used to monitor bird migration. The newest weather surveillance radar, WSR–88D or NEXRAD (for Next Generation Radar), is ideal for studies of bird movements in the atmosphere. This sophisticated radar system can be used to map geographical areas of high bird activity (e.g., stopover, roosting and feeding, and colonial breeding areas). It also provides information on the quantity, general direction, and altitudinal distribution of birds aloft. Currently, the United States Air Force is using NEXRAD, via the U.S. Avian Hazard Advisory System (AHAS), to provide bird hazard advisories to all pilots, military and civilian, in an attempt to warn air traffic of significant bird activity. The information is publicly available for the contiguous United States on line at *http://www.usahas.com* and will soon be available for the State of Alaska.

NEXRAD information is critically important for the protection of habitats used by migratory birds during stopover periods. This information is vital to Department of Defense land managers who protect stopover areas on military land. The data is also particularly important to land managers of military air stations where bird/aircraft collisions threaten lives and cost millions of dollars in damages every year. The Department of Defense established a partnership with the Department of Biological Sciences at Clemson University to collect, analyze, and use the biological information from the NEXRAD network to identify important stopover habitat in relation to Department of Defense installations. Initial efforts were concentrated in the Southeast to complement existing radar data from the Gulf Coast. This partnership has enabled the collection and transfer of radar data from all NEXRAD sites, via modem, to one remote station at Clemson University, where the data can be archived and analyzed.

The Department of Defense uses bird inventory and survey information in connection with the preparation of INRMPs. The Department of Defense also uses bird inventory and survey information when undertaking environmental analyses required under the NEPA. An environmental assessment or an environmental impact statement is used to determine the potential effects of any new, planned activity on natural resources, including migratory birds.

The Department of Defense PIF program is currently developing a database of migratory bird species of concern that are likely to occur on each installation utilizing the Service's published list of Birds of Conservation Concern (*http://migratorybirds.fws.gov/reports/bcc2002.pdf*); priority migratory bird species documented in the comprehensive bird conservation plans (North American Waterbird Conservation Plan (*http://www.waterbirdconservation.org*), United States Shorebird Conservation Plan (*http://shorebirdplan.fws.gov*), Partners in Flight Bird Conservation Plans (*http://www.partnersinflight.org/*); species or populations of waterfowl identified as high, or moderately high, continental priority in the North American Waterfowl Management Plan; listed threatened and endangered bird species in 50 CFR 17.11; and Migratory Bird Treaty Act-listed game birds below desired population sizes (*http://migratorybirds.fws.gov/reports/reports.html*).

Avoidance. Avoidance is the most effective means of minimizing takes of migratory birds. Where practicable, the Department of Defense avoids potentially harmful use of nesting sites during breeding and nesting seasons and of resting sites on migratory pathways during migration seasons. Avoidance sometimes involves using one area of a range rather than another. On some sites in which bombing, strafing, or other activities involving the use of live military munitions could affect birds in the area, the Department of Defense may conduct an initial, benign sweep of the site to ensure that any migratory birds in the area are dispersed before live ordnance is used. Another tool used by the Department of Defense to deconflict flight training activities is the U.S. Air Force Bird Avoidance Model (BAM). This model places breeding bird and Christmas count data into a Geographic Information Systems model to assist range planners in selecting training times when bird activity is low. The BAM is available online at the *http://www.usahas.com* Web site.

Pesticide Reduction. Reducing or eliminating pesticide use also benefits migratory birds. The Armed Forces maintain an integrated pest management (IPM) program that is designed to reduce the use of pesticides to the minimum necessary. The Department of Defense policy requires all operations, activities, and installations worldwide to establish and maintain safe, effective, and environmentally sound IPM programs. IPM is defined as a planned program, incorporating continuous monitoring, education, record-keeping, and communication to prevent pests and disease vectors from causing unacceptable damage to operations, people, property, material, or the environment. IPM uses targeted, sustainable (i.e., effective, economical, and environmentally sound) methods, including education, habitat modification, biological control, genetic control, cultural control, mechanical control, physical control, regulatory control, and the judicious use of least-hazardous pesticides. Department of Defense policy mandates incorporation of sustainable IPM philosophy, strategies, and techniques in all aspects of Department of Defense pest management planning, training, and operations, including installation pest-management plans and other written guidance to reduce pesticide risk and prevent pollution.

Habitat Conservation and Enhancement. Habitat conservation and enhancement generally involve improvements to existing habitat, the creation of new habitat for migratory birds, and enhancing degraded habitats. Improvements to existing habitat include wetland protection, maintenance and enhancement of forest buffers, elimination of feral animals (in particularly feral cats) that may be a threat to migratory birds, and elimination of invasive species that crowd out other species necessary to migratory bird survival. Examples of the latter include control and elimination of brown tree snake, Japanese honeysuckle, kudzu, and brown-headed cowbirds.

Efforts to eliminate invasive species are being undertaken in association with natural resources management under Sikes Act INRMPs. For example, at one site, grazing was reduced from more than 60,000 to about 23,000 acres, and has become a management tool to enhance the competitive advantage of native plants, especially perennial grasses. Special projects are under way on Department of Defense property to control exotic plants and to remove unused structures that occupy potentially valuable habitat or unnaturally increase predator populations. At some locations, native forest habitat is being reestablished.

The preparation of INRMPs continues to offer opportunities to consider such land management measures as converting to uneven-age and/or other progressive forest management that enhances available habitat values, establishing native warm-season grasslands, maintaining and enhancing bottomland hardwood forests, and promoting positive water-use modifications to improve hydrology and avian habitat in arid areas. Department of Defense installations are active in promoting the use of nest boxes and, where appropriate, the use of communications towers for nesting. In addition, the Department of Defense PIF program has prepared fact sheets addressing such issues as communications towers and power lines, West Nile virus, wind energy development, the Important Bird Areas program, and bird/aircraft strike hazards (BASH).

Other. At a few sites where the potential for migratory bird take is more severe, the Department of Defense has implemented extensive mitigation measures. In such instances, the responsible military service has taken practicable measures to minimize the impacts of its operations on protected migratory birds. Such measures include limiting the type and quantity of ordnance; limiting target areas and activities to places and times that protect key nesting areas for migratory birds; implementing fire-suppression programs or measures where wildfire can potentially damage nesting habitat; conducting environmental monitoring; and implementing mitigation measures, such as predator removal, on the site or nearby.

Monitoring the Impacts of Military Readiness Activities on Migratory Birds

The Authorization Act requires the Armed Forces to identify measures to monitor the impacts of military readiness activities on migratory birds. For military lands where migratory bird data may be lacking, monitoring may include the collection of baseline demographic, population, or habitat-association data. Where feasible, the Armed Forces will conduct agreed-upon monitoring to determine the level of take from military readiness activities.

Monitoring provides important data regarding the impacts of military readiness on migratory birds. It also contributes valuable information where data on species of migratory birds may be limited. In addition, monitoring data assists the Armed Forces in guiding their decisions regarding migratory bird conservation, particularly in developing or amending INRMPs.

The Department of Defense monitors bird populations that may be affected by military readiness activities in numerous ways. In addition to the MAPS program discussed above, Department of Defense facilities participate in the Breeding Biology Research and Monitoring Database (BBIRD) program to study nesting success and habitat requirements for breeding birds. Many installations also engage in Christmas bird counts, migration counts (Point, Circle, Area, or Flyover Counts), standardized and/or customized breeding and wintering point counts, grassland-bird flush counts, NEXRAD (discussed above) and BIRDRAD studies, point count surveys, hawk watches, overflight surveys, and/or rookery surveys. At sites where bird takes are a concern, such as Farallon de Medinilla in the Northern Marianas, the Department of Defense engages in more extensive monitoring, including overflight and rookery surveys several times a year, so that it can monitor trends in bird populations.

The Department of Defense is not alone in monitoring the status of birds on its installations. Much of its monitoring is done through formal partnerships with conservation organizations. In addition, Watchable Wildlife programs provide opportunities for the public to provide feedback on the numbers and types of birds they have observed from viewing sites on Department of Defense installations.

The Armed Forces can use clear evidence of bird takes, such as the sight of numerous dead or injured birds, as a signal that it should modify its activities, as practicable, to reduce the number of takes. With respect to the problem of bird/aircraft collisions, the Department of Defense undertakes intensive, bird-by-bird monitoring. The U.S. Air Force Safety Center's Bird/Wildlife Aircraft Strike Hazard team at Kirtland Air Force Base, NM, and the Navy Safety Center at Norfolk, VA, track aircraft/wildlife (bird and mammal) collisions because of the danger such collisions represent to pilots, crews, and aircraft. By focusing on local, regional, and seasonal populations and movements of birds, pilots and airport personnel have been better able to avoid collisions, in many cases by modifying those conditions at airfields that are attractive to birds.

What Are the Provisions of the Rule?

National Environmental Policy Act (NEPA) Considerations

NEPA, and the Council on Environmental Quality's (CEQ) NEPA implementing regulations at 40 CFR 1500–1508, require that Federal agencies prepare environmental impact statements for ''major Federal actions significantly affecting the quality of the human environment.'' These statements must include a detailed analysis of the impacts of an agency's proposed action and any reasonable alternatives to that proposal. NEPA requires the responsible Federal official to ''consult with and obtain comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved'' (42 U.S.C. 4332(2)(C)). NEPA also provides for public involvement in the decision-making process. The CEQ's regulations implementing NEPA emphasize the integration of the NEPA process with the requirements of other environmental laws. The CEQ regulations at 40 CFR 1500.2 state: ''Federal agencies shall to the fullest extent possible * * * integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.'' Regulations at 40 CFR 1502.25 state: ''To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by * * * other environmental review laws and executive orders.''

In keeping with this emphasis, the rule relies on the Armed Forces utilizing the NEPA process to determine whether any ongoing or proposed military readiness activity is ''likely to result in a significant adverse effect on the population of a migratory bird species.'' More particularly, the Armed Forces prepare NEPA analyses whenever they propose to undertake a new military readiness activity that may significantly affect the quality of the human environment; propose to make a substantial change to an ongoing military readiness activity that is

relevant to environmental concerns; learn of significant new circumstances or information relevant to the environmental concerns bearing on an ongoing military readiness activity; or prepare or revise an INRMP covering an area used for military readiness activities. During the preparation of environmental impact statements analyzing the effects of proposed military readiness activities on migratory bird species, the Armed Forces consult with the Service as an agency with ''jurisdiction by law and special expertise.'' If the Armed Forces identify a significant adverse effect on migratory birds during the preparation of a NEPA analysis, this rule requires the Armed Forces to confer and cooperate with the Service to develop and implement appropriate conservation measures to minimize or mitigate any such significant adverse effects. The Armed Forces will continue to be responsible for ensuring that military readiness activities are implemented in accordance with all applicable statutes including NEPA and ESA.

Endangered Species Act Consideration

Section 7(a)(1) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), provides that, ''[t]he Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act.'' Furthermore, section 7(a)(2) requires all Federal agencies to insure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat. We completed an Intra-Service Consultation on the proposed rule and we have determined that this rule to authorize take under the MBTA will have no effect on listed species. The rule does not authorize take under the ESA. If a military readiness activity may affect a listed species, the Armed Forces retains responsibility for consulting with the Service under section 7(a)(2) of the ESA. Similarly, if a military readiness activity is likely to jeopardize the continued existence of a species proposed for listing, the Armed Forces retain responsibility for conferring with the Service in accordance with section 7(a)(4) of the ESA.

Rule Authorization

This rule authorizes the Armed Forces to take migratory birds as an incidental result of military readiness activities. The Armed Forces must continue to apply for and receive an MBTA permit for scientific collecting, control of birds causing damage to military property, or any other activity that is addressed by our existing permit regulations (50 CFR part 13, 21, 22). These activities may not be conducted under the authority of this rule. If any activity of the Armed Forces falls within the scope of our existing regulations, we will consider, when processing the application, the specific take requested as well as any other take authorized by this rule that may occur.

Authorization of take under this rule applies to take of migratory birds incidental to military readiness activities, including (a) all training and operations of the Armed Forces that relate to combat, and (b) the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use. Authorization of take does not apply to (a) routine operation of installation operating support functions, such as: administrative offices; military exchanges; commissaries; water treatment facilities; storage facilities; schools; housing; motor pools; laundries; morale, welfare, and recreation activities; shops; and mess halls, (b) operation of industrial activities, or (c) construction or demolition of facilities listed above.

The authorization provided by this rule is subject to the military service conducting an otherwise lawful military readiness activity in compliance with the provisions of the rule. To ensure the Service maintains the ability to manage and conserve the resource, the Secretary retains the authority to withdraw or suspend authorization of take with respect to any specific military readiness activity under certain circumstances.

With respect to a military readiness activity of the Armed Forces likely to take migratory birds, the rule authorizes take provided the Armed Forces are in compliance with the following requirement:

> If the Armed Forces determine that ongoing or proposed activities may result in a significant adverse effect on the population of a migratory bird species, the Armed Forces must confer and cooperate with the Service to develop and implement appropriate conservation measures to minimize or mitigate such significant adverse effects.

The Armed Forces will continue to be responsible for addressing their activities other than military readiness through a MOU developed in accordance with Executive Order 13186, ''Responsibilities of Federal Agencies to Protect Migratory Birds,'' January 10, 2001.

When Is Take Not Authorized?

If a proposed or an ongoing action may have a significant adverse effect on a population of a migratory bird species, as that term is defined in Section 21.3, the Armed Forces must confer with the Service so that we may recommend conservation measures. In certain circumstances, the Secretary must suspend the take authorization with respect to a particular military readiness activity; in other circumstances, the Secretary has the discretion to initiate a process that may result in withdrawal. We will make every effort to work with the Armed Forces in advance of a potential determination to withdraw take authorization in order to resolve migratory bird take concerns and avoid withdrawal. With respect to discretionary withdrawal, the rule provides an elevation process if the Secretary of Defense or other national defense official appointed by the President and confirmed by the Senate determines that protection of national security requires continuation of the activity.

The Secretary will immediately suspend authorization for take if continued authorization likely would not be compatible with any one of the migratory bird treaties. Withdrawal of authorization may be proposed if the Secretary determines that failure to do so is likely to result in a significant adverse effect on a population of a migratory bird species and one or more of the following circumstances apply:

> (A) The Armed Forces have not implemented conservation measures that (i) are directly related to protecting the migratory bird species affected by the proposed military readiness activity; (ii) would significantly reduce take of migratory birds species affected by the military readiness activity, (iii) are economically feasible, and (iv) do not limit the effectiveness of military readiness activities.
>
> (B) The Armed Forces fail to conduct mutually agreed upon monitoring to determine the effects of a military readiness activity on migratory bird species and/or the efficacy of the conservation measures implemented by the Armed Forces.
>
> (C) The Armed Forces have not provided reasonably available information that the Secretary has determined is necessary to evaluate whether withdrawal of take authorization for the specific military readiness activity is appropriate.

The determination as to whether an immediate suspension of authorization is warranted (i.e., whether the action likely would not be compatible with a migratory bird treaty), or withdrawal of an authorization is proposed will be made independent of each other. Regardless of whether the circumstances of paragraphs (A) through (C) above

exist, there will be an immediate suspension if the Secretary determines, after seeking the views of the Secretary of Defense and after consulting with the Secretary of State, that incidental take of migratory birds during a specific military readiness activity likely would not be compatible with one or more of the migratory bird treaties.

Proposed withdrawal of authorization will be provided in writing to the Secretary of Defense including the basis for the determination. The notice will also specify any conservation measures or other measures that would, if the Armed Forces agree to implement them, allow the Secretary to cancel the proposed withdrawal of authorization. Any take incidental to a military readiness activity subject to a proposed withdrawal of authorization will continue to be authorized by this regulation until the Secretary of the Interior, or his/her delegatee, makes a final determination on the withdrawal.

The Secretary may, at his/her discretion, cancel a suspension or withdrawal of authorization at any time. A suspension may be cancelled in the event new information is provided that the proposed activity would be compatible with the migratory bird treaties. A proposed withdrawal may be cancelled if the Armed Forces modify the proposed activity to alleviate significant adverse effects on a population of a migratory bird species or the circumstances in paragraphs (A) through (C) above no longer exist. Cancellation of suspension or withdrawal of authorization becomes effective upon delivery of written notice from the Secretary to the Department of Defense.

Request for Reconsideration

In order to ensure that the action of the Secretary in not authorizing take does not result in significant harm to the Nation, any proposal to withdraw authorization under 50 CFR 21.15(b)(2) will be reconsidered by the Secretary or his/her delegatee who must be an official nominated by the President and confirmed by the Senate, if, within 45 days of the notification with respect to a military readiness activity, the Secretary of Defense, or other national defense official, who also must be an official nominated by the President and confirmed by the Senate, determines that protection of the national security requires continuation of the action.

Scope of Authorization

The take authorization provided by the rule applies to military readiness activities of the Armed Forces, including those implemented through contractors of the Armed Forces and their agents.

Principles and Standards

As discussed above, the only condition applicable to the authorization under this rule is that the Armed Forces confer and cooperate with the Service if the Armed Forces determine that a proposed or an ongoing military readiness activity may result in a significant adverse effect on a population of a migratory bird species. To avoid this threshold from being reached, as well as to provide for migratory bird conservation, it is in the best interest of the Armed Forces to address potential migratory bird impacts from military readiness activities by adopting the following principles and standards.

To proactively address migratory bird conservation, the Armed Forces should engage in early planning and scoping and involve agencies with special expertise in the matters relating to the potential impacts of a proposed action. When a proposed action by the Armed Forces related to military readiness may result in the incidental take of birds, the Armed Forces should contact the Service so we can assist the Armed Forces in addressing potential adverse impacts on birds and mitigating those impacts. As stated in this rule, the Armed Forces must confer with the Service when these actions may have a significant adverse effect on a population of a migratory bird species.

The Armed Forces will, in close coordination with the Service, develop a list of conservation measures designed to minimize and mitigate potential adverse impacts of authorized military readiness activities on affected migratory bird species. A cooperative approach initiated early in the project planning process will have the greatest potential for successfully reducing or eliminating adverse impacts. Our recommendations will emphasize avoidance, minimization, and rectifying adverse impacts. The Armed Forces should consider obvious avoidance measures at the outset of project planning, such as siting projects to avoid important nesting areas or to avoid collisions of birds with structures, or timing projects to avoid peak breeding activity. In addition, models such as the AHAS and BAM should be used to avoid bird activity when planning flight training and range use. The Armed Forces will consider these conservation measures for incorporation in new NEPA analyses, INRMPs, INRMP revisions, and base comprehensive or master plans, whenever adverse impacts to migratory birds may result from proposed military readiness activities.

''Conservation measures'' are project designs or mitigation activities that are technically and economically reasonable, and minimize the take of migratory birds and adverse impacts while allowing for completion of an action in a timely manner. When appropriate, the Armed Forces should adopt existing industry guidelines supported by the Service and developed to avoid or minimize take of migratory birds. We recognize that implementation of conservation measures will be subject to the availability of appropriations.

The Armed Forces should promote the inclusion of comprehensive migratory bird management objectives from bird conservation plans into the planning documents of the Armed Forces. The bird conservation plans, available either from the Service's Regional Offices or via the Internet, include: North American Waterfowl Management Plan, PIF, and the U.S. Shorebird Conservation Plan. The North American Waterbird Conservation Plan, the newest planning effort, addresses conservation of seabirds, wading birds, terns, gulls, and some marsh birds, and their habitats. The Armed Forces should also work collaboratively with partners to identify, protect, restore, and manage Important Bird Areas, Western Hemisphere Shorebird Reserve Network sites, and other significant bird sites that occur on Department of Defense lands. The Department of Defense should continue to work through the PIF program to incorporate bird habitat management efforts into INRMPs.

In accordance with the Authorization Act and the 2002 revised Sikes Act guidelines, the annual review of INRMPs by the Department of Defense, in cooperation with the Service and State fish and wildlife agencies, will include monitoring results of any migratory bird conservation measures.

The Armed Forces will use the best available databases to determine which migratory bird species are likely to occur in the area of proposed military readiness activities. This includes species likely to occur in the project area during all phases of the project.

The Armed Forces will use the best scientific data available to assess, through the NEPA process or other environmental requirements, the expected impact of proposed or ongoing military readiness activities on migratory bird species likely to occur in action areas. Special consideration will be given to priority habitats, such as important nesting areas, migration stop-over areas, and wintering habitats.

The Armed Forces will adopt, to the maximum extent practicable, conservation measures designed to minimize and mitigate any adverse impacts of authorized military readiness activities on affected migratory bird species. The term ''to the maximum extent practicable'' means without limiting the subject readiness activities in ways that compromise the effectiveness of those activities, and to the extent economically feasible.

At the Department of Defense's request, the Service will provide technical assistance in identifying the migratory bird species and determining those likely to be taken as a result of the proposed action, assessing impacts of the action on migratory bird species, and identifying appropriate conservation measures to mitigate adverse impacts.

Is this rule consistent with the MBTA?

Yes. This issue has two components. First is the question of whether the MBTA prohibits promulgation of regulations authorizing incidental take of migratory birds pursuant to military readiness activities. Second is the question of whether the details of this rule, individually and collectively, conflict with the MBTA in some way.

The starting point for answering both questions is the fact that Sections 704 and 712(2) of 16 U.S.C. provide us with broad authority to promulgate regulations allowing for the take of migratory birds when compatible with the terms of the migratory bird treaties. We find the take that is authorized in this rule is compatible with the terms of the treaties and consistent with the purposes of the treaties.

Regarding the first question, whether any such regulations are permissible under the MBTA, Congress itself by passing the Authorization Act determined that such regulations are consistent with the MBTA and the underlying treaties by requiring us to promulgate such regulations. Even in the absence of the Authorization Act, regulations authorizing take incidental to military readiness activities are compatible with the terms of the treaties, and therefore authorized by the MBTA.

The MBTA implements four treaties: a 1916 treaty with Great Britain on behalf of Canada that was substantially amended by a 1995 protocol; a 1936 treaty with Mexico, amended by a 1997 protocol; a 1972 treaty with Japan; and a 1978 treaty with the former Soviet Union. These international agreements recognize that migratory birds are important for a variety of purposes. They provide a food resource, insectivorous birds are useful to agriculture, they provide recreational benefits and are useful for scientific and educational purposes, and they are important for aesthetic, social, and spiritual purposes. Collectively, the treaties require the Unites States to provide mechanisms for protecting the birds and their habitats, and include special emphasis on protecting those birds that are in danger of extinction.

The Japan and Russia treaties each call for implementing legislation that broadly prohibits the take of migratory birds. At the same time, those treaties allow the implementing legislation to include exceptions to the take prohibitions. The treaties recognize a variety of purposes for which take may be authorized, including scientific, educational, and propagative purposes; the protection of persons or property; and hunting during open seasons. The treaties also contemplate authorizing takings ''for specific purposes not inconsistent with the objectives [or principles]'' of the treaties. The Canada treaty, since adoption of the 1995 Protocol, now includes similar language: ''the taking of migratory birds may be allowed * * * for * * * specific purposes consistent with the conservation principles of this Convention.''

In contrast, the take prohibitions required by the 1936 Mexico treaty have a narrower focus than the later treaties. The Mexico treaty is more clearly directed at stopping the indiscriminate killing of migratory birds by hunting and for commercial purposes through the establishment of closed seasons. In addition, even the language of the Mexico treaty that addresses the need for domestic regulation prohibiting certain activities with respect to migratory birds is subject to the objective ''to satisfy the need set forth in * * * Article[I].'' Article I provides: ''In order that the species may not be exterminated, the high contracting parties declare that it is right and proper to protect birds denominated as migratory, whatever may be their origin, which in their movements live temporarily in the United States of America and the United Mexican States, by means of adequate methods which will permit, in so far as the respective high contracting parties may see fit, the utilization of said birds rationally for purposes of sport, food, commerce and industry.'' Therefore, to the extent that the Mexico treaty is interpreted to have application to take beyond hunting and the like, that treaty must also be interpreted to allow the parties to authorize take that is consistent with the needs set forth in Article I.

The broad language of the exceptions in the Japan, Russia, and Canada treaties clearly indicate that the intent of the parties was not to prohibit all take of migratory birds. Just as clearly, the take of large absolute numbers of birds (e.g. millions of birds taken in sport hunting) is allowable under the treaties, so long as that take is ultimately limited in a way that is consistent with the conservation principles and objectives of the treaties. Thus, allowing for take incidental to military readiness activities is, as a general matter, consistent with the conservation principles and objectives of all three of these treaties.

The Mexico treaty does not require the parties to prohibit incidental take, and therefore allowing take incidental to military readiness activities cannot conflict with the terms of that treaty. And even if that treaty was read to apply more broadly, it is clear that the parties intended it only to require the rational regulation of take, not an absolute prohibition. Allowing take incidental to military readiness activities is consistent with the needs set forth in Article I. More broadly, we conclude that any incidental take allowed under the broad exceptions of the other three treaties is consistent with the Mexico treaty.

Turning to the second question, whether this particular rule governing take incidental to military readiness activities is consistent with the treaties (and therefore the MBTA), the take that is authorized here is for a special purpose consistent with the principles and objectives of the treaties. The authorization allows take of birds only in limited instances—take that results from military readiness activities. Furthermore, the rule expressly requires the Armed Forces to develop conservation measures to minimize or mitigate impacts where such impacts may have a significant adverse effect on a population of a migratory bird species. Moreover, the Secretary must suspend the take authorization if he/she concludes that a specific military readiness activity likely would not be compatible with the migratory bird treaties and may withdraw the authorization if he/she is unable to obtain from Armed Forces the information needed to assure compliance. Thus, the authorization in this rule in effect incorporates a safeguard that provides for compliance with the requirements of the treaties.

It is not entirely clear what level of effect on a migratory bird population would be required to constitute a violation of any of the treaties. It is clear, however, that the relatively minor

(at a population level) amount of take caused by military readiness activities is exceedingly unlikely to constitute a possible violation, even in the absence of any safeguards. When combined with the procedural safeguards set forth in this rule, there is no reasonable chance that a violation of the treaties will occur under this rule. In these circumstances, the take that would be authorized by this rule is thus compatible with the terms of the treaties and consistent with the purposes of those treaties.

The rule's process of broad, automatic authorization subject to withdrawal is particularly appropriate to military readiness activities. First, as noted above, we expect that military readiness activities will rarely, if ever, have the broad impact that would lead to a significant adverse effect on a population of migratory bird species, even absent the conservation measures that the Armed Forces undertake voluntarily or pursuant to another statute, such as the ESA. Second, the Armed Forces, like other federal agencies, have a special role in ensuring that the United States complies with its obligations under the four migratory bird treaties, as evidenced by the Migratory Bird Executive Order 13186 (January 10, 2001). Like other Federal agencies, the Armed Forces strive not only to lessen detrimental effects of their actions on migratory birds but to actively promote the conservation of the resource and integrate conservation principles and practices into agency programs. Numerous internal programs and collaborative ventures among Federal agencies and non-Federal partners have contributed significantly to avian conservation. These efforts are grounded in the tenets of stewardship inherent in our treaty obligations. Third, given the importance of military readiness to national security, it is especially important not to create a complex process that, while perhaps useful in other contexts, might impede the timely carrying-out of military readiness activities.

Why does the rule apply only to the Armed Forces?

This rule was developed in accordance with the Authorization Act, which created an interim period, during which the prohibitions on incidental take of migratory birds would not apply to military readiness activities, and required the development of regulations authorizing the incidental take of migratory birds associated with military readiness activities. This rule carries out the mandates of the Authorization Act. This rule authorizes take resulting from otherwise lawful military readiness activities subject to certain limitations and subject to withdrawal of the authorization to ensure consistency with the provisions of the treaties.

Required Determinations

Regulatory Planning and Review (E.O. 12866). In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action. OMB makes the final determination of significance under Executive Order 12866.

a. Analysis indicates this rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This rule is intended to benefit the Department of Defense, and all of its branches of the Armed Forces, by providing a mechanism to comply with the MBTA and the treaties. A full cost-benefit and economic analysis is not required.

This rule will not affect small businesses or other segments of the private sector. It applies only to the Armed Forces. Thus, any expenditure under this rule will accrue only to the national defense agencies. Our current regulations allow us to permit take of migratory birds only for limited types of activities. This rule authorizes take resulting from the military readiness activities of the Armed Forces, provided the Armed Forces comply with certain requirements to minimize or mitigate significant adverse effects on a population of a migratory bird species.

Analysis of the annual economic effect of this rule indicates that it will have de minimis effects for the following reasons. Without the rule, the Armed Forces could be subject to injunction by third parties via the APA for lack of authorization under the MBTA for incidental takes of migratory birds that might result from military readiness activities. This rule will enable the Armed Forces to alleviate costs associated with responding to litigation as well as costs associated with delays in military training. Furthermore, the rule is structured such that the Armed Forces are not required to apply for individual permits to authorize take for every individual military readiness activity. The take authorization is conveyed by this rule. This avoids potential costs associated with staff necessary to prepare and review applications for individual permits to authorize military readiness activities that may result in incidental take of migratory birds, and the costs that would be attendant to delay.

The principal annual economic cost to the Armed Forces will likely be related to costs associated with developing and implementing conservation measures to minimize or mitigate impacts from military readiness activities that may have a significant adverse effect on a population of a migratory bird species. However, we anticipate that this threshold of potential effects on a population has a low probability of occurring. The Armed Forces are already obligated to comply with a host of other environmental laws, such as NEPA, which requires them to assess impacts of their military readiness activities on migratory birds, endangered and threatened species, and other wildlife. Most of the requirements of this rule will be subsumed by these existing requirements.

With this rule, the Armed Forces will have a regulatory mechanism to enable the Armed Forces to effectively implement otherwise lawful military readiness activities. Without the rule, the Armed Forces might not be able to complete certain military readiness activities that could result in the take of migratory birds pending issuance of an MBTA take permit or resolution of any lawsuits.

b. This rule will not create serious inconsistencies or otherwise interfere with the actions of the Armed Forces, including those other than military readiness. The Armed Forces must already comply with numerous environmental laws intended to minimize impacts to wildlife.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does not have anything to do with such programs.

d. This rule raises novel legal or policy issues. This rule raises a novel policy issue in that it implements a new area of our program to carry out the MBTA. Under 50 CFR 21.27, the Service has the authority to issue special purpose permits for take that is otherwise outside the scope of the standard form permits of section 21. Special purpose permits may be issued for actions whereby take of migratory birds could result as an unintended consequence. However, the Service has previously issued such permits only in very limited circumstances.

Regulatory Flexibility Act. For the reasons discussed under Regulatory Planning and Review above, I certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). A final Regulatory Flexibility Analysis is not required. Accordingly, a

Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act. This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Will not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, et seq.):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. We have determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings. In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The only effect of this rule is to authorize incidental takes of migratory birds by the Armed Forces as a result of military readiness activities. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property.

Federalism. In accordance with Executive Order 13132, and based on the discussions in Regulatory Planning and Review above, this rule will not have significant Federalism effects. A Federalism assessment is not required. Due to the migratory nature of certain species of birds, and given the Federal Government's responsibility to implement the migratory bird treaties, Congress assigned the Federal Government responsibility over these species when it enacted the MBTA. This rule will not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration.

Civil Justice Reform. In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The intent of the rule is to relieve the Armed Forces and the judicial system from potential litigation resulting from potential take of migratory birds during military readiness activities. The Department of the Interior has certified to the Office of Management and Budget that this rule meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act. This rule will not require any new information collections under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Under the Paperwork Reduction Act, we do not need to seek Office of Management and Budget (OMB) approval to collect information from current Federal employees, military personnel, military reservists, and members of the National Guard in their professional capacities. Because this rule will newly enable us to collect information only from employees of the Armed Forces in their professional capacity, we do not need to seek OMB approval under the Paperwork Reduction Act. In other cases, Federal agencies may not conduct or sponsor, and members of the public are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act. We have determined that this rule is categorically excluded under the Department of the Interior's NEPA procedures in Part 516 of the Departmental Manual, Chapter 2, Appendix 1, Categorical Exclusion 1.10. Categorical Exclusion 1.10 applies to: ''policies, directives, regulations, and guidelines of an administrative, financial, legal, technical or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.''

Military readiness activities of the Armed Forces occur across a broad geographic area covering a wide diversity of habitat types and potentially affecting a high diversity of migratory birds. Potential impacts on migratory birds will also vary spatially and temporally across the landscape. In addition, the specific type of military readiness activity will vary significantly among the Armed Forces, and the biological and geographical spectrum across which these activities may occur is potentially unique. Because of the broad spectrum of activities, their locations, habitat types, and migratory birds potentially present that may be affected by this rule, the potential impacts of military readiness activities conducted by the Armed Forces on the affected environment are too broad, speculative and conjectural to lend themselves to meaningful analysis. Thus, it is premature to examine potential impacts of the rule.

However, this determination does not diminish the responsibility of the Armed Forces to comply with NEPA and individual military readiness activities at issue will be subject to the NEPA process by the Armed Forces to evaluate any environmental impacts. Whenever the Armed Forces propose to undertake new military readiness activities or to adopt a new, or materially revised, Integrated Natural Resources Management Plan, and migratory bird species may be affected, the Armed Forces will consult with and obtain comments from the Service, an agency with ''jurisdiction by law or special expertise,'' upon their NEPA analysis. The NEPA analysis will include cumulative effects where applicable. In addition, if the potential for significant effects on migratory birds makes it appropriate, the Armed Forces may invite the Service to participate as a cooperating agency in the preparation of their NEPA analysis. Moreover, authorization under this rule requires that if a proposed military readiness activity may result in a significant adverse impact on a population of migratory bird species, the Armed Forces must confer and cooperate with the Service to develop and implement appropriate measures to minimize or mitigate these effects. The environmental consequences of the proposed military readiness activity, as well as the potential of any such measures to reduce the adverse effects of the proposed activity, would be covered in NEPA documentation prepared for the proposed action.

We have also determined that this authorization would not result in ''extraordinary circumstances'' whereby actions cannot be categorically excluded pursuant to 516 DM 2.3A(2). This rule only authorizes the incidental take of migratory birds (with limitations) as a result of military readiness activities. We are not authorizing the Armed Forces to implement military readiness activities that may have significant adverse impacts on natural resources, have highly controversial environment effects, or result in significant cumulative impacts. If an individual

military readiness action by the Armed Forces or the cumulative impacts of multiple activities may result in such an impact, then the Armed Forces will be responsible for completing an environmental analysis in accordance with NEPA. We are also not authorizing the take of a federally listed or proposed species. The Armed Forces must still comply with the Endangered Species Act.

Furthermore, we expect that military readiness activities will rarely, if ever, have the broad impact that would lead to a significant adverse effect on a population of a migratory bird species, even absent the conservation measures that the Armed Forces undertakes voluntarily or pursuant to another statute. The Armed Forces also have an important role in ensuring that the United States complies with the four migratory bird treaties, the Endangered Species Act, and other applicable regulations for individual ongoing or proposed military readiness activities.

A copy of the Service's Categorical Exclusion determination is available upon request at the address indicated in the **ADDRESSES** section of this rule.

Government-to-Government Relationship with Tribes. In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. This rule applies only to military readiness activities carried out by the Armed Forces that take migratory birds. It will not interfere with the Tribes' ability to manage themselves or their funds.

Energy Effects. On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not expected to significantly affect energy supply, distribution, or use, this action is not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons described in the preamble, we amend title 50, chapter I, subchapter B of the Code of Federal Regulations as follows:

PART 21—[AMENDED]

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

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note following 16 U.S.C. 703.

■ 2. Amend § 21.3 by adding the following definitions, in alphabetical order:

§ 21.3 Definitions.

* * * * *

Armed Forces means the Army, Navy, Air Force, Marine Corps, Coast Guard, and the National Guard of any State.

* * * * *

Conservation measures, as used in § 21.15, means project design or mitigation activities that are reasonable from a scientific, technological, and economic standpoint, and are necessary to avoid, minimize, or mitigate the take of migratory birds or other adverse impacts. Conservation measures should be implemented in a reasonable period of time.

* * * * *

Military readiness activity, as defined in Pub. L. 107–314, § 315(f), 116 Stat. 2458 (Dec. 2, 2002) [Pub. L. § 319 (c)(1)], includes all training and operations of the Armed Forces that relate to combat, and the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use. It does not include (a) routine operation of installation operating support functions, such as: administrative offices; military exchanges; commissaries; water treatment facilities; storage facilities; schools; housing; motor pools; laundries; morale, welfare, and recreation activities; shops; and mess halls, (b) operation of industrial activities, or (c) construction or demolition of facilities listed above.

Population, as used in § 21.15, means a group of distinct, coexisting, conspecific individuals, whose breeding site fidelity, migration routes, and wintering areas are temporally and spatially stable, sufficiently distinct geographically (at some time of the year), and adequately described so that the population can be effectively monitored to discern changes in its status.

* * * * *

Secretary of Defense means the Secretary of Defense or any other national defense official who has been nominated by the President and confirmed by the Senate.

* * * * *

Significant adverse effect on a population, as used in § 21.15, means an effect that could, within a reasonable period of time, diminish the capacity of a population of migratory bird species to sustain itself at a biologically viable level. A population is ''biologically viable'' when its ability to maintain its genetic diversity, to reproduce, and to function effectively in its native ecosystem is not significantly harmed. This effect may be characterized by increased risk to the population from actions that cause direct mortality or a reduction in fecundity. Assessment of impacts should take into account yearly variations and migratory movements of the impacted species. Due to the significant variability in potential military readiness activities and the species that may be impacted, determinations of significant measurable decline will be made on a case-by-case basis.

■ 3. Amend part 21, subpart B, by adding a new § 21.15 as follows:

§ 21.15 Authorization of take incidental to military readiness activities.

(a) *Take authorization and monitoring.*

(1) Except to the extent authorization is withdrawn or suspended pursuant to paragraph (b) of this section, the Armed Forces may take migratory birds incidental to military readiness activities provided that, for those ongoing or proposed activities that the Armed Forces determine may result in a significant adverse effect on a population of a migratory bird species, the Armed Forces must confer and cooperate with the Service to develop and implement appropriate conservation measures to minimize or mitigate such significant adverse effects.

(2) When conservation measures implemented under paragraph (a)(1) of this section require monitoring, the Armed Forces must retain records of any monitoring data for five years from the date the Armed Forces commence their action. During Integrated Natural Resource Management Plan reviews, the Armed Forces will also report to the Service migratory bird conservation measures implemented and the effectiveness of the conservation measures in avoiding, minimizing, or mitigating take of migratory birds.

(b) *Suspension or Withdrawal of take authorization.*

(1) If the Secretary determines, after seeking the views of the Secretary of Defense and consulting with the Secretary of State, that incidental take of migratory birds during a specific military readiness activity likely would not be compatible with one or more of

the migratory bird treaties, the Secretary will suspend authorization of the take associated with that activity.

(2) The Secretary may propose to withdraw, and may withdraw in accordance with the procedures provided in paragraph (b)(4) of this section the authorization for any take incidental to a specific military readiness activity if the Secretary determines that a proposed military readiness activity is likely to result in a significant adverse effect on the population of a migratory bird species and one or more of the following circumstances exists:

(i) The Armed Forces have not implemented conservation measures that:

(A) Are directly related to protecting the migratory bird species affected by the proposed military readiness activity;

(B) Would significantly reduce take of the migratory bird species affected by the military readiness activity;

(C) Are economically feasible; and

(D) Do not limit the effectiveness of the military readiness activity;

(ii) The Armed Forces fail to conduct mutually agreed upon monitoring to determine the effects of a military readiness activity on migratory bird species and/or the efficacy of the conservation measures implemented by the Armed Forces; or

(iii) The Armed Forces have not provided reasonably available information that the Secretary has determined is necessary to evaluate whether withdrawal of take authorization for the specific military readiness activity is appropriate.

(3) When the Secretary proposes to withdraw authorization with respect to a specific military readiness activity, the Secretary will first provide written notice to the Secretary of Defense. Any such notice will include the basis for the Secretary's determination that withdrawal is warranted in accordance with the criteria contained in paragraph (b)(2) of this section, and will identify any conservation measures or other measures that would, if implemented by the Armed Forces, permit the Secretary to cancel the proposed withdrawal of authorization.

(4) Within 15 days of receipt of the notice specified in paragraph (b)(3) of this section, the Secretary of Defense may notify the Secretary in writing of the Armed Forces' objections, if any, to the proposed withdrawal, specifying the reasons therefore. The Secretary will give due consideration to any objections raised by the Armed Forces. If the Secretary continues to believe that withdrawal is appropriate, he or she will provide written notice to the Secretary of Defense of the rationale for withdrawal and response to any objections to the withdrawal. If objections to the withdrawal remain, the withdrawal will not become effective until the Secretary of Defense has had the opportunity to meet with the Secretary within 30 days of the original notice from the Secretary proposing withdrawal. A final determination regarding whether authorization will be withdrawn will occur within 45 days of the original notice.

(5) Any authorized take incidental to a military readiness activity subject to a proposed withdrawal of authorization will continue to be authorized by this regulation until the Secretary makes a final determination on the withdrawal.

(6) The Secretary may, at his or her discretion, cancel a suspension or withdrawal of authorization at any time. A suspension may be cancelled in the event new information is provided that the proposed activity would be compatible with the migratory bird treaties. A proposed withdrawal may be cancelled if the Armed Forces modify the proposed activity to alleviate significant adverse effects on the population of a migratory bird species or the circumstances in paragraphs (b)(2)(i) through (iii) of this section no longer exist. Cancellation of suspension or withdrawal of authorization becomes effective upon delivery of written notice from the Secretary to the Department of Defense.

(7) The responsibilities of the Secretary under paragraph (b) of this section may be fulfilled by his/her delegatee who must be an official nominated by the President and confirmed by the Senate.

Dated: July 25, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Dated: April 10, 2006.

Philip W. Grone,

Deputy Under Secretary of Defense (Installations and Environment).

This document was received at the Office of the Federal Register on February 23, 2007.

[FR Doc. E7–3443 Filed 2–27–07; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 72, No. 39
Wednesday, February 28, 2007

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 72, and 73

RIN 3150–AG63

Power Reactor Security Requirements; Reopening of Public Comment Period

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule: Reopening of public comment period.

SUMMARY: On October 26, 2006 (71 FR 62664), the Nuclear Regulatory Commission (NRC) published for public comment a proposed rule that would amend its current security regulations and would add new security requirements pertaining to nuclear power reactors. Additionally, this rulemaking includes new proposed security requirements for Category I strategic special nuclear material (SSNM) facilities for access to enhanced weapons and firearms background checks. A 75-day comment period was provided for the proposed rule that expired on January 9, 2007. The comment period for the information collection aspects of the proposed rule expired on November 27, 2006. The comment period for this rulemaking was extended on January 5, 2007 (72 FR 480) to close on February 23, 2007. In the same notice, the comment period for the information collection aspects of the rulemaking was extended to January 11, 2007.

The comment period for the proposed rule has been reopened and now expires on March 26, 2007. This includes an extension to the comment period on the information collection aspects of the rulemaking to have both comment periods close on the same day.

DATES: The comment period for the proposed rule has been reopened and now expires on March 26, 2007. This applies to all aspects of the rulemaking, both general comments, as well as comments on the information collection aspects of the rulemaking. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *ATTN:* Rulemakings and Adjudications Staff.

Hand delivered comments should also be addressed to the Secretary, U.S. Nuclear Regulatory Commission, and delivered to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site: *http://ruleforum.llnl.gov.* This site also provides the availability to upload comments as files (any format), if your Web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail: *CAG@nrc.gov.*

Certain documents relating to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Room O1–F21, Rockville, MD. The same documents may also be viewed and downloaded electronically via the rulemaking Web site: *http://ruleforum.llnl.gov.* Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 202–634–3273 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Reed, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1462; e-mail: *TAR@nrc.gov* or Mr. Dennis Gordon, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–6671; e-mail: *DXG@nrc.gov.*

SUPPLEMENTARY INFORMATION: Due to inclement weather, a public meeting scheduled to be held on February 14, 2007 was postponed until March 9, 2007. The purpose of this meeting is to discuss the proposed rule with members of the public and thereby provide information to the public to help inform their comments on the proposed rulemaking. Subsequently on February 16, 2007, the NRC received two separate requests for extension of the comment period on the proposed rule from Riverkeeper, Inc., and the New York State Attorney General's Office. Both requests suggested an extension of the comment period until a date after the public meeting planned for February 14, 2007, was rescheduled. Riverkeeper requested a 60-day extension, while the New York State Attorney General's Office did not specify a particular date.

In order to enable this dialogue with stakeholders to take place prior to the close of the comment period on this proposed rule, and in response to requests from Riverkeeper and the New York State Attorney General, the comment period for the proposed rulemaking is reopened for an additional 30 days. This action is consistent with the NRC's desire to receive informed comments from external stakeholders on this proposed rulemaking. Note that the NRC is now extending the comment period on the information collection aspects of this rulemaking to close on the same day as the general comment period.

The deadline for comments on any aspect of this proposed rulemaking is extended to March 26, 2007.

Dated at Rockville, Maryland, this 22nd day of February, 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E7–3473 Filed 2–27–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 197

[DoD–2006–OS–0023]

RIN 0790–AI12

Historical Research in the Files of the Office of the Secretary of Defense (OSD)

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule would identify and update the policies and procedures for the programs that permit U.S. citizens to perform historical research in records created by or in the custody of the Office of the Secretary of Defense. Historical Research in the Files of the Office of the Secretary of Defense (OSD) updates the policies and procedures for the programs that permit U.S. citizens to perform historical research in records created by or in the custody of the OSD.

DATES: Consideration will be given to all comments received by April 30, 2007.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Storer, 703–696–2197.

SUPPLEMENTARY INFORMATION: Anyone accessing classified material must possess the requisite security clearance. Information requested by historical researchers shall be accessed at a DoD activity or facility under the control of the National Archives and Records Administration (NARA).

Access to records by historical researchers shall be limited to the specific records within the scope of the proposed historical research over which the Department of Defense has classification authority. Access shall also be limited to any other records for which the written consent of other Agencies that have classification authority over information contained in or revealed by the records has been obtained.

Access to unclassified OSD Component files by historical researchers shall be permitted consistent with the restrictions of the exemptions of the Freedom of Information Act. The procedures for access to classified information shall be used if the requested unclassified information is contained in OSD files whose overall markings are classified

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 197

Administrative practice and procedure.

Accordingly, 32 CFR Chapter 1, subchapter M is proposed to be amended by adding part 197 to read as follows:

PART 197—HISTORICAL RESEARCH IN THE FILES OF THE OFFICE OF THE SECRETARY OF DEFENSE (OSD)

Sec.

197.1 Purpose.
197.2 Applicability and scope.
197.3 Definition.
197.4 Policy.
197.5 Responsibilities.
197.6 Procedures.
Appendix A to part 197—Explanation of Freedom of Information Act (5 U.S.C. 552) exemptions.
Appendix B to part 197—Procedures for historical researchers permanently assigned within the executive branch working on official projects.
Appendix C to part 197—Procedures for the Department of State (DOS) foreign relations of the United States (FRUS) series.
Appendix D to part 197—Procedures for historical researchers not permanently assigned to the executive branch.
Appendix E to part 197—Form letter—conditions governing access to official records for historical research purposes.
Appendix G to part 197—Procedures for copying documents.

Authority: 10 U.S.C. 301.

§ 197.1 Purpose.

This part identifies and updates the policies and procedures for the programs that permit U.S. citizens to perform historical research in records created by or in the custody of the OSD consistent with Executive Order 12958, DoD 5200.01–R,[1] DoD 5400.07–R,[2] DoD Directive 5400.11,[3] the Interagency Agreement on Access for Official Agency Historians, and DoD Directive 5230.09.[4]

§ 197.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense and organizations for which the Washington Headquarters Services provides administrative support (hereafter referred to collectively as the ''OSD Components'').

(b) All historical researchers.

(c) Former OSD Presidential Appointees seeking access to records containing information they originated, reviewed, signed, or received while serving in an official capacity.

§ 197.3 Definition.

Historical researcher or researcher. A person desiring to conduct research in OSD files for historical information to use in any project (*e.g.* agency historical office projects, books, articles, studies, or reports) regardless of the person's employment status.

§ 197.4 Policy.

It is DoD policy, pursuant to E.O. 12958, that:

(a) Anyone accessing classified material must possess the requisite security clearance.

(b) Information requested by historical researchers shall be accessed at a DoD activity or facility under the control of the National Archives and Records Administration (NARA). Usually such access will occur at either the Washington National Records Center (WNRC) in Suitland, Maryland, or NARA's Archives II in College Park, Maryland.

(c) Access to records by historical researchers shall be limited to the specific records within the scope of the proposed historical research over which the Department of Defense has classification authority. Access shall also be limited to any other records for which the written consent of other Agencies that have classification authority over information contained in or revealed by the records has been obtained.

(d) Access to unclassified OSD Component files by historical

[1] Copies may be obtained at *http://www.dtic.mil/whs/directives/.*

[2] Copies may be obtained at *http://www.dtic.mil/whs/directives/.*

[3] Copies may be obtained at *http://www.dtic.mil/whs/directives/.*

[4] Copies may be obtained at *http://www.dtic.mil/whs/directives/.*

researchers shall be permitted consistent with the restrictions of the exemptions of the Freedom of Information Act that are contained in E.O. 12958 and explained in the appendix B to this part (5 U.S.C. 552). The procedures for access to classified information shall be used if the requested unclassified information is contained in OSD files whose overall markings are classified.

(e) Under E.O. 12958, or its successor, persons permanently assigned within the Executive Branch may be authorized access to classified information for official projects under DoD classification authority, provided such access is essential to the accomplishment of a lawful and authorized Government purpose and a written determination of the trustworthiness of the persons has been made.

(f) Under E.O. 12958 and paragraph C6.2.2. of DoD 5200.01–R, persons not permanently assigned within the Executive Branch who are engaged in historical research projects or persons permanently assigned within the Executive Branch engaged in personal, *i.e.* unofficial projects, may be authorized access to classified information under DoD classification authority. The authorization shall be based on a written determination of the researcher's trustworthiness, on the proposed access being in the interests of national security, and on the researcher signing a copy of the letter (appendix E to this part) by which he or she agrees to safeguard the information and to authorize a review of any notes and manuscript for a determination that they contain no classified information.

(g) Access for former Presidential appointees is limited to records they originated, reviewed, signed, or received while serving as Presidential appointees.

(h) Contractors working for Executive Branch Agencies may be allowed access to classified OSD Component files. No copies of still classified documents will be released directly to a contractor. All copies of classified documents needed for a classified project will be forwarded to the office of the Contracting Government Agency responsible for monitoring the project. The monitoring office will be responsible for ensuring that the contractor safeguards the documents. The information is only used for the project for which it was requested, and that the contractor returns the documents upon completion of the final project. All copies of documents needed for an unclassified project will undergo a mandatory declassification review before the copies are released to the contractor to use in the project.

(i) The records maintained in OSD Component office files and at the WNRC cannot be segregated, requiring that authorization be received from all agencies whose classified information is or is expected to be in the requested files for access to be permitted.

(j) All researchers must hold security clearances at the classification level of the requested information. In addition, all DoD employed requesters, to include DoD contractors, must have Critical Nuclear Weapons Design Information (CNWDI) access and all other Executive Branch and non-Executive Branch requesters must have a Department of Energy issued ''Q'' clearance to access CNWDI information.

§ 197.5 Responsibilities.

(a) The Director of Administration and Management, Office of the Secretary of Defense, (DA&M, OSD), or designee shall, according to the Deputy Secretary of Defense Memorandum dated August 25, 1993, be the approval authority for access to DoD classified information in OSD Component files and in files at the National Archives, Presidential libraries, and other similar institutions.

(b) The Heads of the OSD Components, when requested, shall:

(1) Determine whether access is for a lawful and authorized Government purpose or in the interest of national security.

(2) Determine whether the specific records requested are within the scope of the proposed historical research.

(3) Determine the location of the requested records.

(4) Provide a point of contact to the OSD Records Administrator.

(c) The OSD Records Administrator shall:

(1) Exercise overall management of the Historical Research Program.

(2) Maintain records necessary to process and monitor each case.

(3) Obtain all required authorizations.

(4) Obtain, when warranted, the legal opinion of the General Counsel of the Department of Defense regarding the requested access.

(5) Perform a mandatory declassification review on documents selected by the researchers for use in unclassified projects.

(6) Provide to prospective researchers the procedures necessary for requesting access to OSD Component files.

(d) The Researcher shall provide any information and complete all forms necessary to process a request for access.

§ 197.6 Procedures.

The procedures for processing and/or researching for access to OSD Component files are in appendices B, C, and D to this part.

Appendix A to Part 197—Explanation of Freedom of Information Act (5 U.S.C. 552) Exemptions

A. Exemptions

Exemption	Explanation
(b)(1)	Applies to information that is currently and properly classified pursuant to an Executive Order in the interest of national defense or foreign policy (See E.O. 12958 and DoD 5200.01–R) (Sec 1.4. Classification Categories from E.O. 12958 are provided on the next page);
(b)(2)	Applies to information that pertains solely to the internal rules and practices of the Agency; this exemption has two profiles, ''high'' and ''low.'' The ''high'' profile permits withholding a document which, if released, would allow circumvention of an Agency rule, policy, or statute, thereby impeding the Agency in the conduct of its mission. The ''low'' profile permits withholding if there is no public interest in the document, and it would be an administrative burden to process the request;
(b)(3)	Applies to information specifically exempted by a statute establishing particular criteria for withholding. The language of the statute must clearly state that the information will not be disclosed;
(b)(4)	Applies to information such as trade secrets and commercial or financial information obtained from a company on a privileged or confidential basis which, if released, would result in competitive harm to the company;
(b)(5)	Applies to inter- and intra-Agency memoranda that are deliberative in nature; this exemption is appropriate for internal documents that are part of the decision-making process, and contain subjective evaluations, opinions, and recommendations;
(b)(6)	Applies to information the release of which could reasonably be expected to constitute a clearly unwarranted invasion of the personal privacy of individuals; and

Exemption	Explanation
(b)(7)	Applies to records or information compiled for law enforcement purposes that could reasonably be expected to interfere with law enforcement proceedings; would deprive a person of a right to a fair trial or impartial adjudication; could reasonably be expected to constitute an unwarranted invasion of the personal privacy of others; disclose the identity of a confidential source; disclose investigative techniques and procedures; or could reasonably be expected to endanger the life or physical safety of any individual.

See Chapter III of DoD 5400.07–R for further information.

B. Extract From E.O. 12958

Section 1.4. *Classification Categories.* Information shall not be considered for classification unless it concerns:

(a) Military plans, weapons systems, or operations;

(b) Foreign government information;

(c) Intelligence activities (including special activities), intelligence sources or methods, or cryptology;

(d) Foreign relations or foreign activities of the United States, including confidential sources;

(e) Scientific, technological, or economic matters relating to the national security, which includes defense against transnational terrorism;

(f) United States Government programs for safeguarding nuclear materials or facilities;

(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism; or

(h) Weapons of mass destruction.

Appendix B to Part 197—Procedures for Historical Researchers Permanently Assigned Within the Executive Branch Working on Official Projects

1. The Head of each OSD Component, when requested, shall:

a. Make a written determination that the requested access is essential to the accomplishment of a lawful and authorized Government purpose, stating whether the requested records can be made available; if disapproved, cite specific reasons.

b. Provide the location of the requested records, including accession and box numbers if the material has been retired to the WNRC.

c. Provide a point of contact for liaison with the OSD Records Administrator if any requested records are located in OSD Component working files.

2. The OSD Records Administrator shall:

a. Process all requests from Executive Branch employees requesting access to OSD Component files for official projects.

b. Determine which OSD Component(s) originated the requested records and, if necessary, request an access determination (paragraph 1.a. of this appendix) from the OSD Component(s) and the location of the requested records, including accession and box numbers if the records are in retired files.

c. Request authorization for access from other Agencies as necessary:

(1) By the terms of the ''Interagency Agreement on Access for Official Agency Historians,'' hereafter referred to as ''the Agreement'', historians employed by a signatory Agency may have access to the classified information of any other Agency signatory to the Agreement found in OSD files. The Central Intelligence Agency (CIA) and National Security Council (NSC) are not signatories to the Agreement. Authorization for access must be obtained from these Agencies, as well as from any other non-signatory Agency whose classified information is expected to be found in the files to be accessed.

(2) If the official historian is employed by an Agency that is not a signatory to the Agreement, authorization for access must be obtained from the CIA, NSC, Department of State (DoS), and any other non-DoD Agency whose classified information is expected to be found in the files to be accessed.

(3) If the requester is not an official historian, authorization for access must be obtained from the CIA, NSC, DoS, and any other non-DoD Agency whose classified information is expected to be found in the files to be accessed.

(4) Make a written determination as to the researcher's trustworthiness based on the researcher having been issued a security clearance.

(5) Compile all information on the request for access to classified information to include evidence of an appropriately issued personnel security clearance and forward the information to the DA&M, OSD, or designee, who shall make the final access determination.

(6) Notify the researcher of the authorization and conditions for access to the requested records or of the denial of access and the reason(s).

(7) Ensure all conditions for access and release of information for use in the project are met.

(8) Make all necessary arrangements for the researcher to visit the WNRC and review the requested records if they have been retired there.

(9) Assign a member of his staff to supervise the researcher's copying of pertinent documents at the WNRC. Provide a copier and toner cartridge or appropriate consumable supplies to be used by the researcher to copy the documents.

(10) If the records are maintained in an OSD Component's working files, arrange for the researcher to review the material and make copies of pertinent documents in the OSD Component's office.

(11) Notify the National Archives or Presidential library concerned of the authorization and conditions for access, if the researcher desiring to research material in those facilities is not an official historian or is an official historian employed by an Agency that is not a signatory to the Agreement.

3. The researcher shall:

a. Submit a request for access to OSD files to the OSD Records Administrator, 1155 Defense, Pentagon, Washington, DC 20301–1155. The request must contain the following information:

(1) The name(s) of the researcher(s) and any assistant(s), level of security clearance, and the office to which the researcher is assigned.

(2) Provide a statement on the purpose of the project, including whether the final product is to be classified or unclassified.

(3) Provide an explicit description of the information being requested and if known, the originating office, so that the identification and location of the information may be facilitated.

(4) An appropriate higher authority must sign the request.

b. Ensure his or her security manager or personnel security office verifies his or her security clearances in writing to the Security Manager for the office of the OSD Records Administrator.

c. Submit notes taken during research, as follows:

(1) Use letter-sized paper (approximately 8½ by 11 inches), writing on only one side of the page. Each page of notes must pertain to only one document.

(2) Indicate at the top of each page of notes the document's originator, date, subject (if the subject is classified, indicate the classification), folder number or other identification, accession number and box number in which the document was found, and the security classification of the document. All notes are considered classified at the level of the document from which they were taken.

(3) Number each page of notes consecutively.

(4) Leave the last 1½ inches on the bottom of each page of notes blank for use by the reviewing agencies.

(5) Ensure the notes are legible, in English, and in black ink.

(6) All notes must be given to the facility staff at the end of each day. The facility staff will forward the notes to the OSD Records Administrator for a declassification review and release determination.

d. Maintain the file integrity of the records being reviewed, ensuring no records are removed and all folders are replaced in the correct box in their proper order.

e. Make copies of any documents pertinent to the project, ensuring that staples are carefully removed and that the documents are restapled before they are replaced in the folder. Subparagraph E3.1.3. of this appendix, also applies to the copying of documents. The copying of documents at the WNRC must be accomplished under the supervision of a member of the OSD Records Administrator staff (appendix D to this part).

f. Submit, prior to unclassified presentation or publication, the completed manuscript, along with any copies of documents used and notes taken, to the OSD Records Administrator for onward transmission to the Chief, Security Review, Executive Services Directorate for review.

g. If the requester is an official historian of an Agency signatory to the Agreement, requests for access to the records at the National Archives or a Presidential library should be addressed directly to the pertinent facility with an information copy to the OSD Records Administrator.

(1) The historian's security clearances must be verified to the National Archives or the Presidential library.

(2) Paragraphs 1.c. through 1.f. of this appendix apply to research in files at the National Archives, a Presidential library, or other facility.

(3) All notes and documents must be given to the facility staff for forwarding to the office of the OSD Records Administrator.

Appendix C to Part 197—Procedures for the Department of State (DoS) Foreign Relations of the United States (FRUS) Series

1. The OSD Records Administrator shall:

a. Determine the location of the records being requested by the DoS for the FRUS series under Public Law No. 102–138.

b. Request authorization from the CIA, NSC, and any other non-DoD Agency not signatory to the Agreement for the State historians to have access to such non-DoD Agency classified information expected to be interfiled with the requested OSD records.

c. Obtain written verification from the DoS Diplomatic Security staff of all security clearances, including ''Q'' clearances.

d. Make all necessary arrangements for the State historians to access and review OSD files.

e. Make all necessary arrangements for the State historians to copy documents selected for use in their research.

(1) According to appendix F to this part, provide a staff member to supervise the copying and the copier to be used to copy the documents.

(2) Compile a list of the documents that were copied by the DoS.

f. Release all documents copied by the DoS for use in the FRUS still classified.

g. Submit to the respective Agency a list of CIA and NSC documents copied and released to the State historians.

h. Process requests from the DoS Historian's office for members of the Advisory Committee on Historical Diplomatic Documentation, who possess the appropriate security clearances, to have access to documents copied and used by the State historians to compile the FRUS series volumes or to the files that were reviewed to obtain the copied document Make all necessary arrangements for the Committee to review any documents that are at the WNRC.

2. The DoS Historian shall:

a. Submit requests for access to OSD files to the OSD Records Administrator, 1155 Defense, Pentagon, Washington, DC 20301–1155. The request should list the names and security clearances for the historians doing the research and an explicit description, including the accession and box numbers, of the files being requested.

b. Submit requests for access for members of the Advisory Committee on Historical Diplomatic Documentation to documents copied by the State historians for the series or the files reviewed to obtain the documents to the OSD Records Administrator.

c. Request that the DoS Diplomatic Security staff verify all security clearances in writing to the Security Manager for the office of the OSD Records Administrator.

d. According to appendix F to this part, supply the toner cartridge, paper, and other supplies required to copy the documents.

e. Give all copies of the documents to the member of the office OSD Records Administrator's staff who is supervising the copying as the documents are copied.

g. Submit any DoD documents desired for use or pages of the manuscript containing DoD classified information to the Chief, Security Review, Executive Services Directorate, 1155, Defense, Pentagon, Washington, DC 20301–1155 for a declassification review prior to publication.

Appendix D to Part 197—Procedures for Historical Researchers Not Permanently Assigned to the Executive Branch

1. The Head of each OSD Component, when required, shall:

a. Make recommendations to the DA&M, OSD, or his designee, as to approval or disapproval of requests to OSD files stating whether release of the requested information is in the interest of national security and whether the information can be made available; if disapproval is recommended, specific reasons should be cited.

b. Provide the location of the requested information, including the accession and box numbers for any records that have been retired to the WNRC.

c. Provide a point of contact for liaison with the OSD Records Administrator if any requested records are located in Component working files.

2. The OSD Records Administrator shall:

a. Process all requests from non-Executive Branch researchers for access to OSD files. Certify that the requester has the appropriate clearances.

b. Obtain prior authorization to review their classified information from the DoS, CIA, NSC, and any other Agency whose classified information is expected to be interfiled with OSD records.

c. Make a determination as to which OSD Component originated the requested records, and as necessary, obtain written recommendations (paragraph 1.a. of this section) for the research to review the classified information.

d. Obtain a copy of the letter in Enclosure 6 of this AI signed by the researcher(s) and any assistant(s).

e. If the requester is a former Presidential appointee (FPA), after completion of the actions described in paragraph 1.b. through 1.b.(4) of this appendix, submit a memorandum to DoD, Human Resources, Security Division, requesting the issuance (including an interim) or reinstatement of an inactive security clearance for the FPA and any assistant and a copy of any signed form letters (paragraph 1.b. of this appendix). DoD, Human Resources, Security Division, will contact the researcher(s) and any assistant(s) to obtain the forms required to reinstate or obtain a security clearance and initiate the personnel security investigation. Upon completion of the adjudication process, notify the OSD Records Administrator in writing of the reinstatement, issuance, or denial of a security clearance.

f. Make a written determination as to the researcher's trustworthiness, based on his or her having been issued a security clearance.

g. Compile all information on the request for access to classified information to include either evidence of an appropriately issued or reinstated personnel security clearance and forward the information to the DA&M, OSD, or his designee, who shall make the final determination on the applicant's eligibility for access to classified OSD files. If the determination is favorable, the DA&M, OSD, or his designee, shall then execute an authorization for access, which will be valid for not more than 2 years.

h. Notify the researcher of the approval or disapproval of the request. If the request has been approved, the notification shall identify the files authorized for review and shall specify that the authorization:

(1) Is approved for a predetermined time period.

(2) Is limited to the designated files.

(3) Does not include access to records and/or information of other Federal Agencies, unless such access has been specifically authorized by those Agencies.

i. Make all necessary arrangements for the researcher to visit the WNRC and review any requested records that have been retired there, to include written authorization, conditions for the access, and a copy of the security clearance verification.

j. If the requested records are at the WNRC, make all necessary arrangements for the copying of documents; provide a copier and toner cartridge for use in copying documents and a staff member to supervise the copying of pertinent documents by the researcher.

k. If the requested records are maintained in OSD Component working files, make arrangements for the researcher to review the requested information and if authorized, copy pertinent documents in the OSD Component's office. Provide the OSD Component with a copy of the written authorization and conditions under which the access is permitted.

l. Compile a list of all the documents copied by the researcher.

m. Perform a mandatory declassification review on all notes taken and documents copied by the researcher.

n. If the classified information to be reviewed is on file at the National Archives, a Presidential library or other facility, notify the pertinent facility in writing of the authorization and conditions for access.

3. The researcher shall:

a. Submit a request for access to OSD Component files to the OSD Records Administrator, 1155 Defense, Pentagon, Washington, DC 20301–1155. The request must contain the following:

(1) As explicit a description as possible of the information being requested so that identification and location of the information may be facilitated.

(2) A statement as to how the information will be used, including whether the final project is to be classified or unclassified.

(3) State whether the researcher has a security clearance, including the level of clearance and the name of the issuing Agency.

(4) The names of any persons who will be assisting the researcher with the project. If the assistants have security clearances, provide the level of clearance and the name of the issuing Agency.

b. A signed copy of the letter (appendix E to this part) by which the requester agrees to safeguard the information and to authorize a review of any notes and manuscript for a determination that they contain no classified information. Each project assistant must also sign a copy of the letter.

c. If the requester is an FPA, complete the forms necessary (see paragraph 1.b. of this appendix) to obtain a security clearance. Each project assistant will also need to complete the forms necessary to obtain a security clearance. If the FPA or assistant have current security clearances, their personnel security office must provide verification in writing to the Security Manager for the office of the OSD Records Administrator.

d. Maintain the integrity of the files being reviewed, ensuring that no records are removed and that all folders are replaced in the correct box in their proper order.

e. If copies are authorized, all copies must be given to the custodian of the files at the end of each day. The custodian will forward the copies of the documents to the OSD Records Administrator for a declassification review and release to the requester.

(1) For records at the WNRC, if authorized, make copies of documents only in the presence of a member of the OSD Records Administrator's staff (appendix G to this part).

(2) As they are copied, all documents must be given to the OSD Records Administrator's staff member supervising the copying.

(3) Ensure all staples are carefully removed and that the documents are restapled before the documents are replaced in the folder. Paragraph 1.c. of this appendix, also applies to the copying of documents.

f. Submit all notes (classified and unclassified) made from the records to the OSD Records Administrator for a declassification and release review through the custodian of the files at the end of each day's review as described in paragraphs 1.c.(3) through 1.c.(5) of appendix B to this part

g. Submit the notes and final manuscript to the OSD Records Administrator for forwarding to the Chief, Security Review, Executive Services Directorate, for a security review and clearance under DoD Directive 5230.09 prior to unclassified publication, presentation, or any other public use.

Appendix E to Part 197—Form Letter—Conditions Governing Access to Official Records for Historical Research Purposes

Date:
OSD Records Administrator
1155 Defense Pentagon
Washington, DC 20301–1155
Dear

I understand that the classified information to which I have requested access for historical research purposes is concerned with the national defense or foreign relations of the United States, and the unauthorized disclosure of it could reasonably be expected to cause damage, serious damage, or exceptionally grave damage to the national security depending on whether the information is classified Confidential, Secret, or Top Secret, respectively. If granted access, I therefore agree to the following conditions governing access to the Office of the Secretary of Defense (OSD) files:

1. I will abide by any rules and restrictions promulgated in your letter of authorization, including those of other Agencies whose information is interfiled with that of the OSD.

2. I agree to safeguard the classified information, to which I gain possession or knowledge because of my access, in a manner consistent with Part 4 of Executive Order 12958, ''National Security Information,'' and the applicable provisions of the Department of Defense regulations concerning safeguarding classified information, including DoD 5200.1–R, ''Information Security Program.''

3. I agree not to reveal to any person or Agency any classified information obtained as a result of this access except as authorized in the terms of your authorization letter or a follow-on letter, and I further agree that I shall not use the information for purposes other than those set forth in my request for access.

4. I agree to submit my research notes for security review, to determine if classified information is contained in them, before their removal from the specific area assigned to me for research. I further agree to submit my manuscript for a similar review before its publication or presentation. In each of these reviews, I agree to comply with any decision of the reviewing official in the interests of the security of the United States, including the retention or deletion of any classified parts of such notes and manuscript whenever the Federal Agency concerned deems such retention or deletion necessary.

5. I understand that failure to abide by the conditions in this statement shall constitute sufficient cause for canceling my access to classified information and for denying me any future access, and may subject me to criminal provisions of Federal Law as referred to in item 6.

6. I have been informed that provisions of title 18 of the United States Code impose criminal penalties, under certain circumstances, for the unauthorized disclosure, loss, copying, or destruction of defense information.

THIS STATEMENT IS MADE TO THE UNITED STATES GOVERNMENT TO ENABLE IT TO EXERCISE ITS RESPONSIBILITY FOR THE PROTECTION OF INFORMATION AFFECTING THE NATIONAL SECURITY. I UNDERSTAND THAT ANY MATERIAL FALSE STATEMENT THAT I MAKE KNOWINGLY AND WILFULLY SHALL SUBJECT ME TO THE PENALTIES OF TITLE 18, U.S. CODE, SECTION 1001.

Signature:
Witness's Signature:
Date:

Appendix F to Part 197—Procedures for Copying of Documents for the Foreign Relations of the United States Series

1. The records will be reviewed and copied at the WNRC, Suitland, Maryland.

2. The requested records have been reviewed under the declassification provisions of E.O. 12958. Part of NARA's government-wide procedures for the review process requires that certain types of documents be tabbed for easy identification. Any tabs removed during the research and copying must be replaced.

3. When documents are being copied, a DoD/WHS/declassification and historical research branch staff member must be present at all times.

4. OSD will supply the copier, but the DoS must supply the toner cartridge, paper, staples, staple remover, stapler, and Post-It Notes. The copier is a Cannon Personal Copier-Model PC 425. It takes one of two cartridges—Cannon E20, which makes 2,000 copies and Cannon E40, which makes 4,000 copies.

5. The number of boxes to be reviewed will determine which of the following two procedures will apply. The Declassification and Historical Research Branch staff will make that determination at the time the request is processed. When the historian completes the review of the boxes, he or she must contact the Declassification and Historical Research Branch to establish a final schedule for copying the needed documents. To avoid a possible delay, a tentative schedule will be established at the time that the review schedule is set.

a. For a small number of boxes—the review and copying will take place simultaneously.

b. For a large number of boxes—the historian will review the boxes and mark the documents that are to be copied using Post-It Notes or WNRC Reproduction Tabs.

6. The documents must be given to the Declassification and Historical Research Branch staff member for transmittal to the Declassification and Historical Research Branch Office for processing.

7. The Declassification and Historical Research Branch will notify the historian when the documents are ready to be picked-up.

Appendix G to Part 197—Procedures for Copying Documents

1. The records will be reviewed and copied at the WNRC, Suitland, Maryland.

2. The requested records have been reviewed under the declassification provisions of E.O. 12958. Part of NARA's government-wide procedures for the review

process requires that certain types of documents be tabbed for easy identification. Any tabs removed during the research and copying must be replaced.

3. The researcher will mark the documents that he or she wants to copy using Post-It Notes or WNRC Reproduction Tabs.

4. Any notes taken during the review process must be given to the WNRC staff for transmittal to the Declassification Branch.

5. When documents are being copied, a DoD/WHS/declassification and historical research branch staff member must be present at all times. In agreeing to permit the copying of documents from OSD classified files at the WNRC, the WNRC is requiring that the Declassification and Historical Research Branch be held solely responsible for the copying process. The staff member is only there to monitor the copying and ensure that all records management and security procedures are followed.

6. The Declassification and Historical Research Branch will supply the copier and toner cartridge.

7. The researcher will need to bring paper, staples, staple remover, stapler, and Post-It Notes.

8. When the researcher completes the review of the boxes, he or she must contact the Declassification and Historical Research Branch to establish a final schedule for copying the needed documents.

9. The documents must be given to the Declassification and Historical Research Branch staff member for transmittal to the Declassification and Historical Research Branch Office for processing.

10. When the documents are ready to be picked up or mailed, the Declassification and Historical Research Branch will notify the office.

11. All questions pertaining to the review, copying, or transmittal of OSD documents must be addressed to the OSD action officer.

12. The WNRC staff can only answer questions regarding the use of their facility.

Dated: February 15, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E7–3021 Filed 2–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 385, 395, and 396

[DOT Docket No. FMCSA–2004–18940]

RIN 2126–AA89

Electronic On-Board Recorders (EOBRs) for Documenting Hours of Service; Listening Session

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of public listening session.

SUMMARY: The FMCSA announces a public listening session to obtain feedback from interested parties on the Agency's January 18, 2007, notice of proposed rulemaking (NPRM) to establish new performance standards for EOBRs, require the use of these devices by certain motor carriers, and to provide incentives for the voluntary use of such devices by the industry. The listening session will provide all interested parties with an opportunity to share their views on the Agency's EOBR rulemaking. All oral comments will be transcribed and placed in the public docket identified at the beginning of this notice.

DATES: The listening session will be held on March 12, 2007, from 9:30 a.m. to 4:30 p.m. Individuals who wish to make a formal presentation should contact Ms. Deborah Freund at 202–366–4009 or e-mail her at *deborah.freund@dot.gov* no later than 5 p.m., e.t., March 8, 2007.

ADDRESSES: The meeting will be held in Room 2230, Nassif Building, DOT Headquarters, 400 Seventh Street, SW., Washington, DC 20590. You may also submit comments to the DOT Docket Management System (DMS), referencing Docket Number FMCSA–2004–18940, using any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number or Regulatory Identification Number (RIN 2126–AA89) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. For additional information on submitting comments, see the Supplemental Information section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms Deborah M. Freund, Senior Transportation Specialist, Vehicle and Roadside Operations Division, FMCSA, (202) 366–4009, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Deborah Freund at 202–366–4009.

SUPPLEMENTARY INFORMATION:

Background

On January 18, 2007 (72 FR 2340), FMCSA published an NPRM to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to incorporate new performance standards for electronic on-board recorders (EOBRs) installed in commercial motor vehicles (CMVs) manufactured on or after the date 2 years following the effective date of the final rule. On-board hours-of-service recording devices meeting FMCSA's current requirements and voluntarily installed in CMVs manufactured before the implementation date of a final rule may continue to be used for the remainder of the service life of those CMVs.

Under the proposal, motor carriers that have demonstrated a history of serious noncompliance with the hours-of-service (HOS) rules would be subject to mandatory installation of EOBRs meeting the new performance standards. If FMCSA determined, based on HOS records reviewed during each of two compliance reviews conducted within a 2-year period, that a motor carrier had a 10 percent or greater violation rate (''pattern violation'') for any regulation in proposed Appendix C to part 385, FMCSA would issue the carrier an EOBR remedial directive. The motor

carrier would be required to install EOBRs in all of its CMVs regardless of their date of manufacture. The motor carrier would have to use the devices for HOS recordkeeping for a period of 2 years, unless: (1) the carrier already had equipped its vehicles with automatic on-board recording devices (AOBRDs) meeting the Agency's current requirements under 49 CFR 395.15 and (2) could demonstrate to FMCSA that its drivers understood how to use the devices.

The FMCSA also proposed changes to the safety fitness standard that would require these carriers, i.e., those with a pattern of violations, to install, use, and maintain EOBRs in order to meet the new standard. Finally, the Agency would encourage industry-wide use of EOBRs by providing the following incentives for motor carriers to voluntarily use EOBRs in their CMVs: (1) Revise the Agency's compliance review procedures to permit examination of a random sample of drivers' records of duty status; (2) provide partial relief from HOS supporting documents requirements, if certain conditions are satisfied; and (3) offer other potential incentives made possible by the inherent safety and driver health benefits of EOBR technology.

Purpose of the Listening Session

The FMCSA is committed to providing all interested parties an opportunity to discuss their perspectives on the pertinent issues that could affect any potential rulemaking changes. The Agency expects to receive numerous comments in response to its EOBR NPRM but believes additional information could be obtained through this listening session. The Agency is planning to hold two additional listening sessions on this rulemaking in the near future. A **Federal Register** notice announcing the dates and locations of the meetings will be published in advance.

Participants in the listening session will be given the opportunity to submit questions that they would like to hear discussed by others in attendance. Participants are discouraged from reading prepared statements. Individuals who wish to submit written comments or statements should submit the information to the public docket identified at the beginning of this notice. Those who desire notification of receipt of comments must include a self-addressed, stamped envelope or postcard. Comments made during the meeting will be transcribed to preserve an accurate record of the discussion.

Meeting Information

The meeting will be held from 9:30 a.m. to 4:30 p.m., e.t., on Monday, March 12, 2007, in Room 2230, Nassif Building, 400 Seventh Street, SW., Washington, DC. Because access to the DOT building is controlled, all visitors must sign in with the security office located at the southwest entrance of the building, present identification with a picture on it, be escorted, and wear a visitor's badge at all times while in the building.

Individuals who wish to make a formal presentation should contact Ms. Deborah Freund at 202–366–4009 or e-mail her at *deborah.freund@dot.gov* no later than 5 p.m., e.t., on March 8, 2007, to ensure that sufficient time is allotted for the presentation and to identify any audio-visual equipment needed for the presentation.

Individuals who are unable to attend the meeting may submit written comments to the docket identified at the beginning of this notice by April 18, 2007, the closing date for comments to the January 18, 2007, NPRM on EOBRs.

Issued on: February 21, 2007.

Rose A. McMurray,

Assistant Administrator, Chief Safety Officer.

[FR Doc. E7–3451 Filed 2–27–07; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 72, No. 39
Wednesday, February 28, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 22, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Equine Survey.

OMB Control Number: 0535–0227.

Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production, disposition, and prices. Services such as statistical consultation, data collection, summary tabulation, and analysis are performed for other Federal and State agencies on a reimbursable basis as the need arises. In the past, equine surveys have been conducted in twelve States where equine is a significant portion of their agriculture. The results are used to provide an assessment of the equine industry's contribution to the State's economy in terms of infrastructure and value.

Need and use of the Information: NASS will collect information on equine inventories, by category; equine revenue, by activity; and equine related expenditures, by purpose. In addition, these surveys will provide NASS with names and addresses of equine operations that can be used for Census of Agriculture enumeration and for the NASS program that seeks to cover 99 percent of U.S. agricultural cash receipts.

Description of Respondents: Farms.

Number of Respondents: 37,917.

Frequency of Responses: Reporting: One-time.

Total Burden Hours: 15,360.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–3483 Filed 2–27–07; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0006]

Ventria Bioscience; Availability of an Environmental Assessment for Field Tests of Rice Genetically Engineered To Express Lactoferrin, Lysozyme, or Serum Albumin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for confined field plantings of rice plants genetically engineered to express the human proteins lactoferrin, lysozyme, or serum albumin. This environmental assessment is available for public review and comment.

DATES: We will consider all comments received on or before March 30, 2007.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, and then click on ''Submit.'' In the Docket ID column, select APHIS–2007–0006 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instruction for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0006, Regulatory Analysis and Development, PPD APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0006.

Reading Room: You may read the environmental assessment (EA) and any comments 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. The EA is available on the internet at the following links: *http://www.aphis.usda.gov/brs/aphisdocs/06_27801r_ea.pdf, http://www.aphis.usda.gov/brs/aphisdocs/06_27802r_ea.pdf, http://*

www.aphis.usda.gov/brs/aphisdocs/06_28502r_ea.pdf

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Cordts, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 734–5531. To obtain copies of the environmental assessment, contact Ms. Cynthia Eck at (301) 734–0667; e-mail: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release in the environment of a regulated article.

On October 2, 2006, APHIS received two Permit applications (06–278–01r and 06–278–02r) followed by a third Permit application (06–285–02r) received on October 12, 2006, from Ventria Bioscience, Sacramento, CA, for confined field plantings of rice (*Oryza sativa*) plants genetically engineered to express gene coding for the proteins lactoferrin, lysozyme, or serum albumin, respectively. The proposed field plantings are to be conducted in Geary County, KS. The subject plants have been genetically engineered, using techniques of micro-projectile bombardment or disarmed *Agrobacterium*-mediated transformation, to express proteins for human lactoferrin, lysozyme, or serum albumin. Expression of the genes is controlled by the rice glutelin 1 promoter (GT1), the rice glutelin 1 signal peptide (gt1), and the nopaline synthase (NOS) terminator sequence from *Agrobacterium tumefaciens.* The genes are expressed only in the endosperm. In addition, the plants may contain either or both of the coding sequences for the genes hygromycin phosphotransferase (*hpt*) or phosphinothricin acetyltransferase (*pat*), which are marker genes that allow for the selection of transgenic tissues in the laboratory using the antibiotic hygromycin and/or the herbicide bialaphos. Neither selectable marker gene is expressed in mature rice tissues, nor do they have any inherent plant pest characteristics or enhance gene transfer from plants to other organisms. The genetically engineered rice plants are considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from plant pathogens.

The purpose of the field plantings are for pure seed production and for the extraction of lactoferrin, lysozyme, and serum albumin for a variety of research and commercial products. There is currently no commercial rice production in Geary County or in any other location in the state of Kansas. The planting will be conducted using physical confinement measures. In addition, the protocols and field plot design, as well as the procedures for termination of the field plantings, are designed to ensure that none of the subject rice plants persist in the environment after the crop is harvested.

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risks associated with the proposed release of these transgenic rice plants, an environmental assessment (EA) has been prepared. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Copies of the EA are available from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 22nd day of February 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–3484 Filed 2–27–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0026]

Public Meetings; National Animal Identification System Animal Identification Number Device Distribution Databases

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meetings.

SUMMARY: This is a notice to inform interested stakeholders of upcoming public meetings to discuss the implementation of private/State animal identification number device distribution databases for the animal identification component of the National Animal Identification System, which is a voluntary program. The meetings are being organized by the Animal and Plant Health Inspection Service.

DATES: Two meetings will be held, the first on Monday, March 5, 2007, from 1 p.m. to 6 p.m., and Tuesday, March 6, 2007, from 8 a.m. to noon, and the second on Monday, March 12, 2007, from 1 p.m. to 6 p.m., and Tuesday, March 13, 2007, from 8 a.m. to noon.

ADDRESSES: The public meetings will be held in the Hilton Kansas City Airport, 8801 NW. 112th Street, Kansas City, MO.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Hammerschmidt, Coordinator, National Animal Identification System, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737–1231; (301) 734–5571.

SUPPLEMENTARY INFORMATION: As part of ongoing efforts to safeguard animal health, the U.S. Department of Agriculture (USDA) initiated implementation of the National Animal Identification System (NAIS) in 2004. The NAIS is a cooperative State-Federal-industry program coordinated by USDA's Animal and Plant Health Inspection Service (APHIS).

The first two components of the program, premises registration and animal identification, are well underway. The third component, animal tracing, is currently under development by APHIS and its State and industry partners. Industry, through private systems, and States will manage the animal tracking databases (ATDs) that maintain the movement records of animals. These information systems will provide the locations of a subject animal and the records of other animals that the subject animal came into contact with at

each premises. Currently, we have cooperative agreements with 14 organizations that are participating by managing interim ATDs.

The NAIS is a voluntary program, and protecting individuals' private information and confidential business information is important to APHIS and to all participants and potential participants in the system. APHIS maintains only limited premises registration information and will not have direct access to animal identification or movement records. Animal health officials will request access to animal movement and location records only in the case of an animal disease event.

In keeping with this policy, the records of animal identification number (AIN) devices distributed to a premises when used for voluntary participation in the NAIS will be held by private entities and organizations or by States in AIN device distribution databases (AIN DDDs), rather than in APHIS's AIN Management System. This program change is, we believe, an important one that will serve to encourage participation in the voluntary animal identification component of the NAIS.

While AIN tags used for disease and/or regulatory programs such as the National Scrapie Eradication Program will continue to be administered through the AIN Management System, the distribution records of AIN devices to producers that voluntarily participate in the NAIS will not be maintained on that system. APHIS will continue to approve identification devices for official use in the NAIS and establish agreements with the manufacturers for the authorized use of the AIN. Producers will continue to need a premises identification number to obtain AIN tags. The revised system will still maintain the data requirements of the AIN Management System, but the records of AINs distributed to each premises will be held privately or by the States. The AIN DDDs will be integrated with the NAIS in a manner similar to the one used for the integration of private and State ATDs into our Animal Trace Processing System (ATPS).

Authorized Federal and State animal health officials will need access to some of the animal tracking and animal identification information to be held in the privately or State-administered databases in certain situations. APHIS has defined the situations that would trigger the authorization for animal health officials to request information from AIN DDDs through the ATPS as follows:

1. An indication of (suspect, presumptive positive, etc.) or confirmed positive test for a foreign animal disease;

2. An animal disease emergency as determined by the Secretary of Agriculture and/or State Departments of Agriculture; and

3. The need to conduct a traceback/traceforward to determine the origin of infection for a program disease (brucellosis, tuberculosis, etc.).

The transition to the private and State AIN DDDs is expected to begin in April 2007. Therefore, in order to provide a forum for the discussion of issues related to privately and State-administered AIN DDDs, APHIS is holding two public meetings. Interested private organizations and State agencies that have databases that could integrate with the NAIS as AIN DDDs are encouraged to attend. Other stakeholders, such as producers and AIN tag manufacturers, device managers, and resellers, are also encouraged to participate. APHIS has approved AIN devices from several manufacturers. Producers can request AIN devices directly from these AIN tag manufacturers or from the AIN device managers or resellers who have marketing agreements with the authorized manufacturers. Additional companies and individuals may become engaged in the distribution of AIN devices. Because each of these groups and entities has a role in the distribution of AIN devices, a process that will be affected by this transition to State and private AIN DDDs, these entities too should consider participating in the meetings even if they do not plan on providing AIN DDDs.

The first of the two public meetings is scheduled for Monday, March 5, 2007, from 1 p.m. to 6 p.m., and Tuesday, March 6, 2007, from 8 a.m. to noon. The second meeting is scheduled for Monday, March 12, 2007, from 1 p.m. to 6 p.m., and Tuesday, March 13, 2007, from 8 a.m. to noon. Information regarding the meetings may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 23rd day of February 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–3509 Filed 2–27–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency

Request for Extension of a Currently Approved Information Collection; Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent (FSA–325)

AGENCY: Commodity Credit Corporation/Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) to request the renewal of a currently approved information collection. This information collection is used by CCC and FSA to document or determine whether representatives or survivors of a producer are entitled to receive payments earned by a producer who dies, disappears, or is declared incompetent before receiving payments or other disbursements.

DATE: *Comments on this notice must be received on or before April 30, 2007 to be assured consideration.*

FOR FURTHER INFORMATION CONTACT: Mike Sienkiewicz, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202)720–8959; Electronic mail: *Mike.sienkiewica@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

OMB Control Number: 0560–0026.

Expiration Date: September 30, 2007.

Type of Request: Extension of a currently approved information collection.

Abstract: Persons desiring to claim payment due a person who has died, disappeared, or has been declared incompetent must do so on Form FSA–325, ''Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent''. This information is used by FSA county office employees to document the relationship of heirs or beneficiaries and determine the order of precedence for disbursing payments to survivors of the person who has died,

disappeared, or been declared incompetent.

Information is obtained only when a producer eligible to receive a payment or disbursement dies, disappears, or is declared incompetent, and documentation is needed to determine if any survivors are entitled to receive such payments or disbursements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours (½ hour) per response.

Respondents: Individual producers.

Estimated Number of Respondents: 2,000.

Estimated Number of Responses per Respondent: one.

Estimated Total Annual Burden on Respondents: 1,000.

Comments are invited on the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the 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 should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Mike Sienkiewicz, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, (202) 720–8959.

Comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will also become a matter of public record.

Signed at Washington, DC, on February 20, 2007.

Glen L. Keppy,

Acting Executive Vice President, Commodity Credit Corporation and Administrator, Farm Service Agency.

[FR Doc. 07–899 Filed 2–27–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nebraska National Forest, Nebraska & South Dakota Black-Tailed Prairie Dog (*Cynomys ludovicianus*) Management on the Nebraska National Forest and Associated Units

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service published a Notice of Intent in the **Federal Register** of September 29, 2006, in FR Volume 71, No. 189, on pages 57460–57461, concerning request for comments on a Supplement to the Final Environmental Impact Statement for the 2002 Nebraska National Forest Revised Land and Resource Management Plan for black-tailed prairie dog (*Cynomys ludovicianus*) management on the Nebraska National Forest and associated units. Instead of supplementing the Final Enviromental Impact Statement for the 2002 Nebraska National Forest Revised Land and Resource Management Plan, the Agency will prepare an Environmental Impact Statement (EIS) for black-tailed prairie dog (*Cynomys ludovicianus*) management on the Nebraska National Forest and associated units. This EIS will tier to and not supplement the Final EIS for the 2002 Revised Nebraska National Forest Land and Resource Management Plan.

The proposed action is to amend current management direction in the Nebraska National Forest Land and Resource Management Plan to meet various multiple use objectives by: (1) Specifing the desired range of acres of prairie dog colonies that would be provided on the Nebraska National Forest and associated units; and (2) to be able to use toxicants if the acreage exceeds the desired range and for multiple use objectives. The proposed action would amend Chapter 1, Section H, Standard #1 in the Nebraska National Forest Land and Resource Management Plan, which allows for limited use of rodenticdes in the interior of the Forest. The proposed action would also authorize the site-specific control of prairie dogs forest-wide, including the use of rodenticides, when management thresholds are exceeded for geographic areas. Future prairie dog control would occur based on management thresholds without further NEPA analysis.

Public Comments

Public comment was received in response to the September 29, 2006 Notice of Intent. The comments have been analyzed and distilled into a comprehensive set of analysis issues. Since the proposed action and purpose and need for the project have not changed, those who have already commented do not need to resubmit their comments. However, comments will continue to be accepted, but will be most useful if received by March 16, 2007.

FOR FURTHER INFORMATION CONTACT: Mike McNeill, Team Leader (605) 745–4107.

Dated: February 20, 2007.

Donald J. Bright,

Forest Supervisor, Nebraska National Forest.

[FR Doc. E7–3469 Filed 2–27–07; 8:45 am]

BILLING CODE 3410–11–P

BROADCASTING BOARD OF GOVERNORS

Notice of Membership of SES Performance Review Board

SUMMARY: Title 5 United States Code, Section 4314, requires that notice of the appointment of an individual to serve as a member of a performance review board shall be published in the **Federal Register.** The following individuals have been appointed to serve as PRB members for BBG; Laura Marin; Anne Purcell; and Gary Shinners.

ADDRESSES: Broadcasting Board of Governors, 330 Independence Ave., SW., Washington, DC 20237.

FOR FURTHER INFORMATION CONTACT: Prell Murphy, Acting Director of Human Resources; telephone (202) 619–3763.

Dated: February 21, 2007.

Janice H. Brambilla,

Executive Director.

[FR Doc. 07–901 Filed 2–27–07; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Socioeconomic Research and Monitoring Program for the Florida Keys National Marine Sanctuary: Recreation/Tourism in the Florida Keys—A Ten-year Replication.

Form Number(s): None.

OMB Approval Number: 0648–xxxx.

Type of Request: Regular submission.

Burden Hours: 10,539.

Number of Respondents: 15,686.

Average Hours Per Response: Auto, air and cruise ship visitors: On-site survey, 4 minutes; mail-back surveys, 15 minutes; other visitor surveys: On-site: 15 minutes; mail-back surveys, 20 minutes; resident mail survey, 1 hour; and supply-side surveys, 5 minutes.

Needs and Uses: This is an approximate ten-year replication of the study ''Linking the Economy and Environment of the Florida Keys/Florida Bay'' which established baseline measurements for recreation/tourist uses of the Florida Keys National Marine Sanctuary (FKNMS). The baseline measurements were taken in 1995–96 for the broader recreation/tourist uses, while for reef use the baseline measurements were taken in 2000–2001. Baseline measurements were taken on number of users and recreation/tourist uses of the Florida Keys, along with estimates of economic value of resource use, economic impact associated with these uses on the local and regional economies, importance/satisfaction ratings for 25 natural resource attributes, facilities and services, and demographic profiles of users. This application also includes establishment of new baselines for knowledge, attitudes and perceptions of Sanctuary management strategies and regulations for recreation/tourist user groups, adds evaluations of management alternatives for coral reefs, and adds information that will support better predictions of how users will respond to management/regulations.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: February 22, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–3429 Filed 2–27–07; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

Bureau: International Trade Administration (ITA).

Title: Commercial Service Market Segmentation Study of Moderate U.S. Exporters Focus Groups.

Agency Form Number: ITA–XXXX.

OMB Number: None.

Type of Request: Regular Submission.

Burden: 108 hours.

Number of Respondents: 72.

Average Hours per Response: 1.5 hours.

Needs and Uses: Expanding U.S. exports is a national priority essential to improving U.S. trade performance. The Department of Commerce, ITA, U.S. Commercial Service (CS) serves as the key U.S. government agency responsible for promoting exports of goods and services from the United States, particularly by small and medium-sized enterprises, and assisting U.S. exporters in their dealings with foreign governments. The CS is mandated by the Government Performance and Results Act of 1993 and the President's Management Agenda Fiscal Year 2002 to improve program performance and achieve better results for the American people. In accordance with these mandates, the CS needs to address the weaknesses and opportunities for improvement identified by the Office of Management and Budget's 2003 Program Assessment Rating Tool (PART). To address these weaknesses and opportunities and in an effort to remain relevant to the marketplace and optimize our respective operations, the Commercial Service, Manufacturing Extension Partnership (MEP), Census Bureau (Census), and Export-Import Bank (Ex-Im) have embarked on a market segmentation research study of moderate U.S. exporters. The objectives are to gain market knowledge and generate statistically valid characterizations about the needs and buying behavior of exporting companies, with a particular focus on Moderate exporters, which are defined as those U.S. firms that currently export, but on a limited or reactive basis and whose international sales comprise less than 10% of total sales or whose international sales growth is less than 10% per year. Respondents benefit from the collection of this information because it will be used to improve services provided to the public. Without this information, the CS/MEP/Census/Ex-Im team is unable to systematically determine the needs, attitudes and behaviors of U.S. exporters. This effort will gather statistically valid market intelligence on SME attitudes and behaviors vis-à-vis making international sales and working with a government consultant.

Affected Public: U.S. companies that are recruited by Pacific Consulting Group, the vendor hired by the U.S. Commercial Service for this research.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230. E-mail: *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, *David_Rostker@omb.eop.gov* or fax (202) 395–7285 within 30 days of the publication of this notice in the **Federal Register**.

Dated: February 22, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–3430 Filed 2–27–07; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Generic Clearance for Questionnaire Pretesting Research

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 and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 30, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Theresa J. DeMaio, U. S. Census Bureau, Room 3127, FOB 4, Washington, DC 20233–9150, (301) 457–4894 (or via the Internet at *theresa.j.demaio@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request an extension of the current OMB approval to conduct a variety of small-scale questionnaire pretesting activities under this generic clearance. A block of hours will be dedicated to these activities for each of the next three years. OMB will be informed in writing of the purpose and scope of each of these activities, as well as the time frame and the number of burden hours used. The number of hours used will not exceed the number set aside for this purpose.

This research program will be used by the Census Bureau and survey sponsors to improve questionnaires and procedures, reduce respondent burden, and ultimately increase the quality of data collected in the Census Bureau censuses and surveys. The clearance will be used to conduct pretesting of decennial, demographic, and economic census and survey questionnaires prior to fielding them. Pretesting activities will involve one of the following methods for identifying measurement problems with the questionnaire or survey procedure: Cognitive interviews, focus groups, respondent debriefing, behavior coding of respondent/interviewer interaction, and split panel tests.

II. Method of Collection

Any of the following methods may be used: Mail, telephone, face-to-face; paper-and-pencil, CATI, CAPI, Internet, or IVR.

III. Data

OMB Number: 0607–0725.
Form Number: Various.
Type of Review: Regular submission.
Affected Public: Individuals or households, Farms, Business or other for-profit organizations.
Estimated Number of Respondents: 5,500.
Estimated Time per Response: 1 hour.
Estimated Total Annual Burden Hours: 5,500.
Estimated Total Annual Cost: There is no cost to respondents, except for their time to complete the questionnaire.
Respondent's Obligation: Voluntary.
Legal Authority: 13 U.S.C. 131, 141, 142, 161, 181, 182, 193, and 301.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 22, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–3431 Filed 2–27–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Age Search Service

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 and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 30, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Angela Feldman Harkins, Assistant Director (Processing), United States Census Bureau, National Processing Center, Jeffersonville, Indiana, 46132, on (812) 218–3434 (or via the Internet at *angela.m.feldman.harkins@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

Age Search is a service provided by the U.S. Census Bureau for persons who need official transcripts of personal data as proof of age for pensions, retirement plans, medicare, and social security. The transcripts are also used as proof of citizenship to obtain passports or to provide evidence of family relationship for rights of inheritance. The Age Search forms are used by the public in order to provide the Census Bureau with the necessary information to conduct a search of historical population decennial census records in order to provide the requested transcript. The Age Search service is self-supporting and is funded by the fees collected from the individuals requesting the service.

II. Method of Collection

The Form BC–600, Application for Search of Census Records, is a public use form that is submitted by applicants requesting information from the decennial census records. Applicants are requested to enclose appropriate fee by check or money order with the completed and signed Form BC–600 and return by mail to the U.S. Census Bureau, Personal Census Search Unit, in Jeffersonville, Indiana. The Form BC–649 (L), which is called a ''Not Found'', advises the applicant that search for information from the census records was unsuccessful. The BC–658 (L), is sent to the applicant when insufficient information has been received on which to base a search of the census records. These two forms request additional information from the applicant to aid in the search of census records.

III. Data

OMB Number: 0607–0117.
Form Number: BC–600, BC–649(L), BC–658(L).
Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 4,470 Total (BC–600–3,233; BC–649 (L)–1,036; BC–658(L)–201).

Estimated Time per Response: BC–600–12 minutes; BC–649(L)–6 minutes; BC–658(L)–6 minutes.

Estimated Total Annual Burden Hours: 772 hours.

Estimated Total Annual Cost: The Age Search processing fee is $65.00 per case. An additional charge of $20 per case for expedited requests requiring results within one day is also available.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Title 13, United States Code, Section 8.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 22, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–3432 Filed 2–27–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Current Industrial Reports Surveys—WAVE II (Mandatory and Voluntary Surveys)

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 and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 30, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Mendel D. Gayle, Assistant Chief for Census and Related Programs, (301) 763–4587, Census Bureau, Manufacturing and Construction Division, Room 2102A, Building #4, Washington, DC 20233 (or via the Internet at: *mendel.d.gayle@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request a revision of the currently approved Office of Management and Budget (OMB) clearance of the Current Industrial Reports (CIR) for Wave II. The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR surveys primarily publish data on quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. These surveys provide continuing and timely national statistical data on manufacturing. Individual firms, trade associations, and market analysts use the results of these surveys extensively in planning or recommending marketing and legislative strategies.

The CIR program includes both mandatory and voluntary surveys. Typically, the monthly and quarterly surveys are conducted on a voluntary basis and annual collections are mandatory. The collection frequency of individual CIR surveys is determined by the cyclical nature of production, the need for frequent trade monitoring, or the use of data in Government economic indicator series. Some monthly and quarterly CIR surveys have an annual ''counterpart'' collection. The annual counterpart collects annual data on a mandatory basis from those firms not participating in the more frequent collection.

Due to the large number of surveys in the CIR program, for clearance purposes, the CIR surveys are divided into ''waves.'' One wave is resubmitted for clearance each year. This year the Census Bureau plans to submit mandatory and voluntary surveys of Wave II for clearance. During the economic census years, years ending in 2 and 7 all voluntary annual surveys are made mandatory. For the 2007 Economic Census the following surveys are converting to mandatory status: MA311D—''Confectionery'', MA333N—''Fluid Power Products for Motion Control (Including Aerospace), and MA336G—''Aerospace Industry''. The MQ335C—''Fluorescent Lamp Ballasts'' is discontinued. All known manufacturing activities for this industry are done outside the United States. The surveys included in Wave II are:

Mandatory surveys	Voluntary survey
M311J—Oilseeds, Beans, and Nuts (Primary Producers).	*M327G—Glass Containers.
M313N—Cotton and Raw Linters in Public Storage.	*MQ311A—Flour Milling Products.
M313P—Consumption on the Cotton System and Stocks.	*MQ325A—Inorganic Chemicals.
MQ313A—Textiles	MQ325F—Paint, Varnish, and Lacquer.
MQ315A—Apparel	*These voluntary surveys have mandatory annual counterparts.
MQ333W—Metalworking Machinery.	
MA311D—Confectionery.	
MA314Q—Carpets and Rugs.	
MA321T—Lumber Production and Mill Stocks.	
MA325G—Pharmaceutical Preparations, except Biologicals.	
MA333N—Fluid Power Products for Motion Control (Including Aerospace).	
MA333P—Pumps and Compressors.	
MA335E—Electric Housewares and Fans.	
MA335J—Insulated Wire and Cable.	
MA336G—Aerospace Industry.	

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. We ask respondents to return monthly report forms within 10 days, quarterly report forms within 15 days, and annual report forms within 30 days of the initial mailing. Telephone calls and/or letters encouraging participation will be mailed to respondents who have not responded by the designated time.

III. Data

OMB Number: 0607–0395.

Form Number: See Chart Above.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 8,182.

Estimated Time per Response: 1.332 hours.

Estimated Total Annual Burden: 10,857 hours.

Estimated Total Annual Cost: The estimated cost to respondents for all the CIR reports in Wave II for fiscal year 2008 is $185,329.

Respondent's Obligation: The CIR program includes both mandatory and voluntary surveys.

Legal Authority: Title 13, United States Code, Sections 61, 81, 131, 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 22, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–3433 Filed 2–27–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1501

Approval for Expansion of Authority for Subzone 99E The Premcor Refining Group Inc. (Oil Refinery), Delaware City, DE

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Delaware Economic Development Office, grantee of FTZ 99, has requested authority on behalf of The Premcor Refining Group Inc. (Premcor), to expand the scope of manufacturing activity conducted under zone procedures within Subzone 99E at the Premcor refinery in Delaware City, Delaware (FTZ Docket 21–2006, filed 5/31/2006);

Whereas, notice inviting public comment has been given in the **Federal Register** (71 FR 34303, 6/14/2006);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby orders:

The application to expand the scope of manufacturing authority under zone procedures within Subzone 99E, is approved, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR § 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non–privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.10, #2709.00.20, #2710.11.25, #2710.11.45, #2710.19.05, #2710.19.10, #2710.19.45, #2710.91.00, #2710.99.05, #2710.99.10, #2710.99.16, #2710.99.21 and #2710.99.45 which are used in the production of:

-petrochemical feedstocks (examiners report, Appendix ''C'');

-products for export;

-and, products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 12th day of February 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration.

Alternate Chairman Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–3434 Filed 2–27–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1500

Expansion of Foreign–Trade Zone 164, Muskogee, Oklahoma

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Muskogee City–County Port Authority, grantee of Foreign–Trade Zone 164, submitted an application to the Board for authority to expand FTZ 164–Site 1 to include two additional parcels and to expand the zone to include two additional sites in Muskogee and McAlester, Oklahoma, within and adjacent to the Tulsa Customs and Border Protection port of entry (FTZ Docket 29–2006; filed 7/12/06);

Whereas, notice inviting public comment was given in the **Federal Register** (71 FR 40991, 7/19/06) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 164 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 12th day of February 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration.

Alternate Chairman Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–3428 Filed 2–27–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 05–BIS–10

In the Matter of: William Kovacs, 24 Georgetown Road, Boxford, MA 01921, Respondent; Final Decision and Order

This matter is before me upon a Recommended Decision and Order of an Administrative Law Judge (''ALJ''), as further described below.

In a charging letter filed on June 28, 2005, the Bureau of Industry and Security (''BIS'') alleged that Respondent, William Kovacs, committed six violations of the Export Administration Regulations (''Regulations'')[1], issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the ''Act''),[2] related to the illegal export of an industrial furnace to the Beijing Research Institute of Materials and Technology (''BRIMT'') in the People's Republic of China. The export of the furnace, which took place in 1999, required a license because the exporter, Elatec (Kovacs' company), knew or had reason to know at the time of the export that the item would be used in the design, development, production, or use of missiles in or by China, as described in 744.3(a)(2) of the Regulations. A license application submitted for the export was explicitly denied by BIS before the export occurred, and no license for the export was ever obtained.

The charging letter alleged that Kovacs sold, transferred, forwarded and/or disposed of the furnace with knowledge that a violation would subsequently occur, that Kovacs conspired to export the furnace without a license, that Kovacs caused the furnace to be exported without a license, and that Kovacs took actions with the intent to evade the Regulations in connection with the furnace export. Further, the charging letter alleged that Kovacs made two false statements to the U.S. Government during the investigation of the illegal export.

In accordance with 766.3(b)(1) of the Regulations, on June 28, 2005, BIS mailed the notice of issuance of the charging letter by certified mail to Kovacs at his last known address. The notice of issuance of a charging letter was received and signed for by Kovacs on July 5, 2005. To date, Kovacs has not filed an answer to the charging letter with the ALJ, as required by the Regulations.

In accordance with 766.7 of the Regulations, BIS filed a Motion for Default Order on January 11, 2007. This Motion for Default Order recommended that Kovacs be denied export privileges under the Regulations for a period of 5 years and be assessed a monetary penalty of $66,000. Under 766.7(a) of the Regulations, ''[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear,'' and ''on BIS's motion and without further notice to the respondent,]the ALJ] shall find the facts to be as alleged in the charging letter.'' Based upon the record before him, the ALJ held Kovacs in default.

On January 26, 2007, the ALJ issued a Recommended Decision and Order in which he found that Kovacs committed one violation each of § 764.2(b), (d), (e) and (h) of the Regulations, and two violations of § 764.2(g) of the Regulations. The ALJ also recommended the penalty of denial of Kovacs' export privileges for five years and a monetary penalty of $66,000.

The ALJ's Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under § 766.22 of the Regulations.

I find that the record supports the ALJ's findings of fact and conclusions of law. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations and the facts of this case, and the importance of preventing future unauthorized exports.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law contained in the ALJ's Recommended Decision and Order.

Accordingly, it is therefore ordered,

First, that a civil penalty of $66,000 is assessed against Kovacs which shall be paid to the Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Second, that pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Kovacs will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as further described in the attached Notice.

Third, that, for a period of five years from the date of this Order, William Kovacs, 24 Georgetown Road, Boxford, MA 01921, and when acting for or on behalf of Kovacs, his representatives, agents, assigns and employees (hereinafter collectively referred to as the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

[1] The charged violations occurred from 1998, 1999 and 2001. The Regulations governing the violations at issue are found in the 1998, 1999 and 2001 versions of the Code of Federal Regulations (15 CFR parts 730–774 (1998–1999, 2001)). Actions taken during this administrative enforcement proceeding are governed by the Regulations in effect at the time such actions take place.

[2] From August 21, 1994, through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000, (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001, (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2006, (71 FR 44,551 (August 7, 2006)), has continued the Regulations in effect under IEEPA.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the Untied States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, that, after notice and opportunity for comment as provided in § 766.23 of the Regulations, any 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.

Sixth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: February 22, 2007.

Mark Foulon,

Acting Under Secretary of Commerce for Industry and Security.

Attachments

Notice

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), and the Federal Claims Collection Standards (31 CFR parts 900–904 (2002)), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed respondent is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C.A. 3717 and 31 CFR 901.9.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and respondent will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of 6 percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C.A. 3717 and 31 CFR 901.9.

The foregoing constitutes the initial written notice and demand to respondent in accordance with § 901.2(b) of the Federal Claims Collection Standards (31 CFR 901.2(b)).

Instructions for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Bureau of Industry and Security, Room H–6622, 14th Street and Constitution Avenue, NW., Washington, DC. Attn: Jennifer Kuo.

Recommended Decision and Order

On June 28, 2005, the Bureau of Industry and Security (''BIS''), U.S. Department Commerce, issued a Charging Letter initiating this administrative enforcement proceeding against William Kovacs (''Kovacs''). The Charging Letter alleged that Kovacs committed six violations of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2006)) (''Regulations''),[1] issued under the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401–2420 (2000)) (''Act'').[2] In accordance with § 766.7 of Regulations, BIS moved for the issuance of an Order of Default against Kovacs for his failure to file an answer to the allegations in the Charging letter issued by BIS within the time period required by law.

A. Legal Authority for Issuing an Order of Default

Section 766.7 of the Regulations states that BIS may file a motion for an order of default if a respondent fails to file a timely answer to a charging letter. That section, entitled Default, provides in pertinent part:

> Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on BIS's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing appropriate sanctions.

15 CFR 766.7 (2005).

Pursuant to § 766.6 of the Regulations, a respondent must file an answer to the charging letter ''within 30 days after being served with notice of the issuance of the charging latter * * *'' initiating the proceeding.

[1] The charged violations occurred during 1998, 1999 and 2001. The Regulations governing the violations at issue are found in the 1998, 1999 and 2001 versions of the Code of Federal Regulations (15 CFR parts 730–774 (1998–1999, 2001)). The 2006 Regulations establish the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12,924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000, 3 CFR, 2000 Comp. 397 (2001), continued the Regulations in effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706 (2000) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001, 3 CFR, 2001 Comp. 783 (2002), as extended by the Notice of August 3, 2006, 71 FR 44551 (Aug. 7, 2006), has continued the Regulations in effect under the IEEPA.

B. Service of the Notice of Issuance of Charging Letter

In the case, BIS served notice of issuance of the Charging Letter in accordance with § 766.3(b)(1) of the Regulations when it sent a copy of the Charging Letter by certified mail to Kovacs at his last known address on June 28, 2005. The notice of issuance of a charging letter was received and signed for by Kovacs on July 5, 2005.

C. Summary of Violations Charged

The Charging Letter issued by BIS included a total of six (6) charges related to the illegal export of a manufacturing furnace to the Beijing Research Institute of Materials and Technology (''BRIMT'') in the People's Republic of China. The export of the furnace, which took place in 1999, required a license because the exporter, Elatec (Kovacs' company), knew or had reason to know at the time of the export that the item would be used in the design, development, production, or use of missiles in or by China, as described in § 744.39a)(2) of the Regulations. A license application submitted for the export was explicitly denied by BIS before the export occurred, and no license for the export was over obtained.

The Charging Letter alleged that Kovacs sold, transferred, forwarded and/or disposed of the furnace with knowledge that a violation would subsequently occur, that Kovacs conspired to export the furnace without a license, that Kovacs caused the furnace to be exported without a license, and that Kovacs took actions with the intent to evade the Regulations in connection with the furnace export. Furthermore, the Charging Letter alleged that Kovacs made two false statements to the U.S. Government during the investigation of the illegal export.

D. Penalty Recommendation

[Redacted Section]

E. Conclusion

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the Respondent, as provided in § 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order. *See* 15 CFR 766.22(c).

Dated: January 26, 2007.

The Honorable Joseph N. Ingolia,

Chief Administrative Law Judge.

[FR Doc. 07–905 Filed 2–27–07; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: February 28,2007.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2004), for administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates. With respect to the antidumping duty order on Wooden Bedroom Furniture from the People's Republic of China, the initiation of the antidumping duty administrative review for that case is being published in a separate initiation notice.

Initiation of Reviews:

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than January 31, 2008.

Antidumping Duty Proceedings	Period to be Reviewed
THE PEOPLE'S REPUBLIC OF CHINA: Folding Gift Boxes[1].	
A–570–866	1/1/06 - 12/31/06
Red Point Paper Products Co., Ltd./Red Point Paper Products. Factory (Dongguan Shilong)/Silver Team Trading Ltd..	
THE PEOPLE'S REPUBLIC OF CHINA: Wooden Bedroom Furniture[2].	
A–570–890	1/1/06 - 12/31/06
Countervailing Duty Proceedings.	
None..	
Suspension Agreements.	
RUSSIA: Certain Cut–to-Length Carbon Steel Plate.	
A–821–808	1/1/06 - 12/31/06
Joint Stock Company Severstal.	

[1] If one of the above named companies does not qualify for a separate rate, allother exporters of Folding Gift Boxes from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] The administrative review for the above referenced case will be published in a separate initiation notice.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v. United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the

review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: February 22, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–3438 Filed 2–27–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

C–357–813

Preliminary Results of Full Sunset Review: Countervailing Duty Order on Honey from Argentina

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

SUMMARY: On November 1, 2006, the Department of Commerce (the Department) initiated a sunset review of the countervailing duty (CVD) order on honey from Argentina, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties and adequate substantive responses from respondent interested parties, the Department determined to conduct a full sunset review of this CVD order pursuant to section 751(c) of the Act and 19 CFR 351.218(e)(2). As a result of our analysis, the Department preliminarily finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the ''Preliminary Results of Review'' section of this notice.

EFFECTIVE DATE: February 28, 2007.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2006, the Department initiated the first sunset review of the CVD order on honey from Argentina, pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 71 FR 64242 (November 1, 2006). The Department received notices of intent to participate from the American Honey Producers Association (AHPA) and the Sioux Honey Association (SHA), the petitioners in the original investigation (collectively, ''domestic interested parties''), within the deadline specified in 19 CFR 351.218(d)(1)(i). AHPA and SHA claimed interested party status as trade or business associations a majority of whose members manufacture, produce or wholesale a domestic like product for the United States under section 771(9)(E) of the Act; SHA also claimed interested party status under section 771(9)(C) of the Act, as domestic producers of processed and raw honey in the United States engaged in the manufacture, production, or wholesale of honey in the United States. The Department received substantive responses from the domestic interested parties and the following respondent interested parties: the Government of Argentina (GOA), Nexco, S.A (Nexco), HoneyMax, S.A (HoneyMax), and the Asociación de Cooperativas Argentinas (ACA).

On December 20, 2006, the Department determined that the participation of the respondent interested parties was adequate, and that it was appropriate to conduct a full sunset review. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, Import Administration, Re: *Adequacy Determination: Sunset Review of the Countervailing Duty Order on Honey from Argentina* dated December 20, 2006, and on file in the Central Records Unit (CRU), Room B–099 of the main Commerce Building.

Scope Of The Order

The merchandise covered by this order is artificial honey containing more than 50 percent natural honeys by weight, preparations of natural honey containing more than 50 percent natural honeys by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, combs, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, the Department's written description of the merchandise covered by this order is dispositive.

Analysis Of Comments Received

All issues raised in this review are addressed in the *Preliminary Issues and Decision Memorandum* from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration (*Preliminary Decision Memorandum*), dated concurrently with this notice and which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the CRU. In addition, a complete version of the *Preliminary Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the *Preliminary Decision Memorandum* are identical in content.

Preliminary Results Of Review

The Department preliminarily determines that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy likely to prevail if the order were revoked is 5.85 percent.

Interested parties may submit case briefs and hearing requests no later than 50 days after the date of publication of these preliminary results, in accordance with 19 CFR 351.309(c)(1)(i) and 19 CFR 351.310(c). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days from the filing of the case briefs, in accordance with 19 CFR 351.309(d). If a hearing is requested, parties will be notified of the date, time and location. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such briefs, no later than June 29, 2007.

We are issuing and publishing these preliminary results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: February 20, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–3437 Filed 2–27–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022207D]

Draft Programmatic Environmental Impact Statement

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

ACTION: Notice of public hearings.

SUMMARY: NMFS will hold a series of public hearings regarding the Draft Programmatic Environmental Impact Statement (DPEIS) for Research on Steller Sea Lions and Northern Fur Seals.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates, times, and locations of public hearings for this issue.

FOR FURTHER INFORMATION CONTACT: Mike Payne or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 16, 2007, notice was published in the **Federal Register** (72 FR 7652) of the availability of the DPEIS for review and comments. Written comments on the DPEIS must be received by April 2, 2007. NMFS will hold three public hearings to inform interested parties of the alternatives analyzed and accept comments. Please be advised that a valid government-issued photo-identification will be required for entry through building security at the Silver Spring, MD and Seattle, WA hearings.

Public Hearings Agenda

Public hearings will be held at the following dates, times, and locations:

1. March 13, 2007, 1 to 4 pm; Silver Spring Metro Complex, Bldg. 4, Science Center, 1301 East-West Highway, Silver Spring, MD;

2. March 15, 2007, 4 to 7 pm; Alaska Fisheries Science Center, Bldg. 9, 7600 Sand Point Way, Seattle, WA; and

3. March 18, 2007, 5 to 8 pm; Hilton Hotel, 501 West 3rd Avenue, Anchorage, AK.

Written comments will be accepted at these hearings as well as during the comment period.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tyrone Stuckey or Dee Jenkins, 301–713–2289 (voice) or 301–427–2521 (fax), at least five business days before the scheduled meeting date.

Dated: February 22, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–3517 Filed 2–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022207B]

National Standard 1 Guidelines; Scoping Process

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

ACTION: Notice of scoping meetings; extension of scoping period.

SUMMARY: NMFS announces several scoping meetings for the environmental impact statement for implementation of annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA). Such guidance would be added to the National Standard 1 Guidelines. NMFS also extends the ending date of the scoping period for this action from April 2, 2007, through April 17, 2007.

DATES: Dates and locations of scoping meetings are listed below under **ADDRESSES**. Written comments must be received by April 17, 2007.

ADDRESSES: Scoping meetings will be held at the following locations:

South Atlantic Fishery Management Council Meeting, March 6, 2007, 6:30 p.m. to 7:30 p.m. at the Jekyll Island Club Hotel, Jekyll Island, GA 31527.

National Marine Fisheries Service Headquarters, Silver Spring, March 9, 2007, 9 a.m. to 3 p.m., Silver Spring Metro Center ı3 Building, Room 4527, Silver Spring, MD 20910.

Western Pacific Fishery Management Council Meeting, March 14, 2007, 7:30 p.m. to 9 p.m. at the Ala Moana Hotel, Honolulu, HI 96814.

Caribbean Fishery Management Council Meeting, March 20, 2007, 6 p.m. to 7 p.m. at the Ponce Hilton Hotel, Ponce, PR 00716.

Gulf of Mexico Fishery Management Council Meeting, March 29, 2007, 6:30 p.m. to 7:30 p.m. at the Embassy Suites Hotel, Destin, FL 32550.

NMFS may hold additional scoping meetings during the comment period that ends April 17, 2007.

You may submit comments on issues and alternatives, by any of the following methods:

- E-mail: *annual.catchlimitDEIS@noaa.gov*. Include ''Scoping comments on annual catch limit DEIS'' in subject line of the message.
- Fax: 301–713–1193
- Mail: Mark Millikin; National Marine Fisheries Service, NOAA; 1315 East-West Highway; Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mark Millikin; National Marine Fisheries Service, 301–713–2341.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *www.gpoaccess.gov/fr/index*.

Background

The MSRA, signed into law by President Bush on January 12, 2007, set forth new requirements related to overfishing, including new ACL and AM provisions for federally managed fisheries in the U.S. exclusive economic zone. NMFS initiated action through a notice of intent (NOI) to develop guidance related to these new provisions, specifically requirements set forth under sections 103(b)(1) and (c)(3), 104(a)(10), (b), and (c) of the MSRA. NMFS intends to revise the National Standard 1 (NS1) Guidelines, 50 CFR 600.310, through a proposed and final rule to incorporate guidance of these MSRA sections before the end of 2007. NMFS is seeking input on ACLs and AMs and related matters in the NS1 Guidelines. More background related to this action is contained in the NOI published on February 14, 2007 (72 FR 7016), and is not repeated here.

If NMFS is able to schedule additional scoping meetings with Regional Fishery Management Councils, it will issue additional notices in the **Federal Register**.

Special Accommodations

The public meetings listed in this notice will be accessible to people with physical disabilities. Requests for sign language interpretation and other auxiliary aids should be directed to Jennifer Ise (301–713–2341), at least 5 days before the scheduled session.

Dated: February 23, 2007.

Alan D. Risenhoover,

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

[FR Doc. E7–3507 Filed 2–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022207E]

Marine Mammals; File No. 1120–1898

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Eye of the Whale (Olga von Ziegesar, Principal Investigator), P.O. Box 15191, Fitz Creek, AK 99603, has applied in due form for a permit to conduct research on humpback whales (*Megaptera novaeangliae*).

DATES: Written, telefaxed, or e-mail comments must be received on or before March 30, 2007.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1120–1898.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Brandy Hutnak, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant requests a five-year scientific research permit to continue a long-term census of humpback whales in Prince William Sound and adjacent waters of Alaska. Up to 2,250 takes for the close vessel approach, photo-identification and behavioral observation of whales is requested annually to determine the population size, distribution, recurrence of individuals, feeding habits, vital rates, associations between animals, and sex of individuals.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 23, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–3508 Filed 2–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

[I.D. 111606C]

Marine Mammals and Endangered Species; National Marine Fisheries Service File No. 493–1848; U.S. Fish and Wildlife Service File No. MA130062

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service, Interior.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Darlene R. Ketten, Ph.D., Woods Hole Oceanographic Institution, Biology Department, MRF- Room 233, MS 50, Woods Hole, MA 02543 has been issued a permit to receive, import, and export marine mammal specimens for scientific research purposes.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9200; fax (978) 281–9371; and

U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203; phone (800) 358–2104; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On August 28, 2006, notice was published in the **Federal Register** (71 FR 50893) that a request for a scientific research permit had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR parts 18 and 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Dr. Ketten has been issued a scientific research permit to possess and import/export worldwide marine mammal and endangered species parts from the orders of Cetacea (dolphins, porpoises and whales), Pinnipedia (seals, sea lions and walrus), Carnivora (sea otter, *Enhydra lutris*, and polar bear, *Ursus maritimus*) and Sirenia (dugongs and manatees). Whole carcasses, heads, or temporal bones (ears) are requested from stranded animals that die prior to beaching, are euthanized upon stranding, or which die in captivity. No animals may be intentionally killed for the purpose of collecting specimens, and no money can be offered for the specimens. This permit has been issued for a period of 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement. Issuance of this permit, as required by the ESA, was based on a finding that

such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 22, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: February 22, 2007.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 07–900 Filed 2–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Historical Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, this notice announces a meeting of the Department of Defense Historical Advisory Committee. The meeting will be open to the public.

DATES: Tuesday, March 13th at 10 a.m.

ADDRESSES: The meeting will be held on the 5th Floor, Suite 5000, 1777 North Kent Street, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Mrs. Pamela Bennett at 703–588–7889 or Ms. Carolyn Thorne at 703–588–7890 for information, and or upon arrival at the building in order to be admitted.

Dated: February 12, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–893 Filed 2–27–07; 8:45 am]

BILLING CODE 5000–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Summer Study on DSB 2007 Summer Study: Challenges to Military Operations in Support of National Interests met in closed session on February 21, 2007; at the Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Assess technological, operational, and policy oriented solutions.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil,* or via phone at (703) 571–0083.

Due to scheduling difficulties, there is insufficient time to provide timely notice required by Section 10(a) of the Federal Advisory Committee Act and Subsection 102–3. 105(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR Part 102–3. 150(b), which further requires publication at least 15 calendar days prior to the meeting.

Dated: February 22, 2007.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–894 Filed 2–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Nuclear Deterrence Skills met in closed session on February 22–23, 2007; at the Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Assess all aspects of nuclear deterrent skills as well as the progress Department of Energy (DoE) has made since the publication of the Chiles Commission report.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil,* or via phone at (703) 571–0083.

Due to scheduling difficulties, there is insufficient time to provide timely notice required by Section 10(a) of the Federal Advisory Committee Act and Subsection 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 102–3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

Dated: February 22, 2007.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–895 Filed 2–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

New Mexico Training Range Initiative, Cannon Air Force Base, NM

AGENCY: Department of the Air Force.

ACTION: Record of Decision.

SUMMARY: On February 13, 2007, the United States Air Force signed the ROD for the New Mexico Training Range Initiative, Cannon Air Force Base, New Mexico. The ROD states the Air Force decision to implement Alternative A (Preferred Alternative) that will expand the size, operational altitudes and usefulness of the Pecos Military Operations Area and Associated Air Traffic Controlled Assigned Airspace.

The decision was based on matters discussed in the Final Environmental Impact Statement (EIS), inputs from the public and regulatory agencies, and other relevant factors. The Final EIS was made available on October 20, 2006 in

the **Federal Register** (Volume 71, Number 203, Pages 61967–61968) with a wait period ending November 20, 2006. The ROD documents only the decision of the Air Force with respect to the proposed Air Force actions analyzed in the Final EIS.

FOR FURTHER INFORMATION CONTACT: Sheryl K. Parker, Headquarters Air Combat Command, Integrated Planning Office, 129 Andrews St, Suite 102 Langley AFB VA 23655 or call (757) 764–9334.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7–3467 Filed 2–27–07; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Housing Privatization Phase II, Hickam Air Force Base, HI and Bellows Air Force Station, HI

AGENCY: Department of the Air Force.

ACTION: Record of Decision (ROD).

SUMMARY: On February 13, 2007, the United States Air Force signed the ROD for the Housing Privatization Phase II, Hickam Air Force Base, Hawaii, and Bellows Air Force Station, Hawaii. The ROD states the Air Force decision to implement Alternative B (Privatization Excluding Fort Kamehameha) that will convey and privatize 1,297 of the remaining 1,330 Government-owned military housing units on Hickam AFB and six family housing units on Bellows AFS. Privatization would exclude the 25.75 acres of land and 33 historic housing units on Fort Kamehameha.

The decision was based on matters discussed in the Final Environmental Impact Statement (EIS), inputs from the public and regulatory agencies, and other relevant factors. The Final EIS was made available on December 22, 2006 in the **Federal Register** (Volume 71, Number 246, Page 77013) with a wait period ending January 22, 2007. The ROD documents only the decision of the Air Force with respect to the proposed Air Force actions analyzed in the Final EIS.

FOR FURTHER INFORMATION CONTACT: Ronnie Lanier, 15 CES/CEV, 75 H Street, Hickam AFB, Hawaii, (808) 449–1584 x238.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7–3464 Filed 2–27–07; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Draft Environmental Impact Statement (DEIS) for Base Closure and Realignment (BRAC) Actions at Fort Belvoir, VA

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army announces the availability of a DEIS which evaluates the potential environmental impacts associated with realignment actions directed by the Base Closure and Realignment (BRAC) Commission at Fort Belvoir, Virginia.

DATES: The public comment period for the DEIS will end 60 days after publication of this NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Please send written comments on the DEIS to ATTN: EIS Comments, Fort Belvoir Directorate of Public Works, 9430 Jackson Loop, Suite 100, Fort Belvoir, Virginia, 22060–5116. E-mail comments may be sent to *environmental@belvoir.army.mil*.

FOR FURTHER INFORMATION CONTACT: Mr. Don Carr, Fort Belvoir Public Affairs Office, at (703) 805–2583, during normal business hours Monday through Friday.

SUPPLEMENTARY INFORMATION: The subject of the DEIS and the Proposed Action are the construction and renovation activities at Fort Belvoir associated with the BRAC-directed realignment of Fort Belvoir. The DEIS also updates the land use plan portion of the installation's Real Property Master Plan due to the substantial changes at the installation due to the proposed realignment.

To implement the BRAC recommendations, Fort Belvoir will be receiving personnel, equipment, and missions from various closure and realignment actions within the Department of Defense. To implement the BRAC Commission recommendations, the Army will provide the necessary facilities, buildings, and infrastructure to accommodate personnel being realigned from the Washington Headquarters Services (WHS); National Geospatial-Intelligence Agency (NGA); various Army entities moving from leased space in the National Capital Region (NCR); U.S. Army Medical Command (MEDCOM); Program Executive Office, Enterprise Information System (PEO EIS); and Missile Defense Agency Headquarters Command Center (MDA HQCC). Details of the BRAC Commission's recommendations can be found at *http://www.brac.gov*.

Alternatives in the DEIS include four alternative land use plans that contain alternative means of accommodating the units, agencies and activities being realigned to Fort Belvoir. These alternatives include: (1) Town Center Alternative, (2) City Center Alternative, (3) Satellite Campuses Alternative, and (4) Preferred Alternative. The Preferred Alternative contains various elements of the other land use alternatives, and includes construction, renovation, and operation of proposed facilities to accommodate incoming military missions as mandated by the 2005 BRAC Commission's recommendations for Fort Belvoir. The No Action Alternative is also addressed in the DEIS.

The DEIS analyses indicate that implementation of the preferred alternative will have short and long-term, significant adverse impacts on the transportation network at Fort Belvoir and its surrounding area, moderate to significant impacts on biological resources, and long-term minor adverse and beneficial impacts on socioeconomic resources. Minor short and long-term adverse impacts on all other resources at the installation would potentially occur from implementation of the preferred alternative. The no action alternative provides the baseline conditions for comparison to the preferred alternative.

The Army invites the general public, local governments, other Federal agencies, and state agencies to submit written comments or suggestions concerning the alternatives and analyses addressed in the DEIS. The public and government agencies are invited to participate in a public meeting where oral and written comments and suggestions will be received. The date, time, and place of the public meeting will be announced through the local media.

An electronic version of the DEIS can be viewed or downloaded from the following URL: *http://www.hqda.army.mil/acsim/brac/nepa_eis_docs.htm*.

Dated: February 22, 2007.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. 07–904 Filed 2–27–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 30, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 21, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Midwest Regional Educational Laboratory Needs Assessment and Focus Groups.

Frequency: Monthly.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household; Businesses or other for-profit; Not-for-profit institutions; Farms; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 2,840.

Burden Hours: 993.

Abstract: Documentation in this submission includes data collection instruments and sample designs for gathering information about the educational needs of state departments, districts, schools, and other educational stakeholders in the Midwest region. Information regarding regional needs is gathered as part of Task 1.1 of the Midwest Regional Laboratory contract and will be used to set priorities for selecting content on particular issues, practices, and policies that warrant attention. Analyses of regional educational needs assessments will be used to identify training, technical assistance priorities and needs, to monitor such needs and activities, and to ensure that the activities respond to the region's needs.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3213. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–3392 Filed 2–27–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by March 29, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget; 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3)

Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: February 21, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title: National Survey of Algebra Teachers.

Abstract: The National Mathematics Advisory Panel (Panel), established within the Department of Education as part of the President's American Competitiveness Initiative through Executive Order 13398, April 18, 2006, intends to conduct a national survey of algebra teachers currently teaching during 2007 spring semester. Through this survey, the Panel seeks to understand day-to-day experiences of algebra teachers in public school classrooms across the nation to obtain thought-provoking, revealing information and to conduct further research. Because learning algebra is so often a turning point in a student's math education—when the student either thrives and moves forward or struggles and perhaps gives up on math—algebra teachers can offer a unique perspective on math education that is well worth understanding in some detail.

Additional Information: The Department is requesting emergency processing for this collection in order to conduct this survey immediately. The Math Panel must survey algebra teachers this school term of 2007 by the beginning of April 2007, allowing teachers several weeks to respond to the survey before the end of the school year. The Panel intends to study the survey responses, and review results of the research and will summarize their findings. These findings will under-pin recommendations presented by the Panel in the final report. If the normal clearance process was followed, this survey would not be able to be conducted and a final report would be incomplete. Therefore, it is essential that the survey is conducted by the beginning of April 2007 so that teachers have enough time to respond to the survey and results of the survey can be presented in time.

Frequency: One time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,000.

Burden Hours: 333.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3284. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–3395 Filed 2–27–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERCs)—Accessible Medical Instrumentation (CFDA No. 84.133E–6); and Workplace Accommodations (CFDA No. 84.133E–7)

ACTION: Notices inviting applications for new awards for fiscal year (FY) 2007; Correction.

SUMMARY: On February 14, 2007, we published in the **Federal Register** (72 FR 7325 and 7328) two notices inviting applications (NIAs) for new awards for FY 2007 for the RERC for Accessible Medical Instrumentation and the RERC for Workplace Accommodations competitions. Each of the NIAs contained an incorrect date for the deadline of transmittal of applications.

In the NIA for the RERC for Accessible Medical Instruction (CFDA No. 84.133E–6), on pages 7325 and 7326, first columns, ''Deadline for Transmittal of Applications: April 30, 2007'' is corrected to read ''Deadline for Transmittal of Applications: April 16, 2007.''

In the NIA for the RERC for Workplace Accommodations (CFDA No. 84.133E–7), on pages 7328 and 7329, third columns, ''Deadline for Transmittal of Applications: April 30, 2007'' is corrected to read ''Deadline for Transmittal of Applications: April 16, 2007.''

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) 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 by contacting the program contact person listed in this section.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. 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.gpoaccess.gov/nara/index.html.*

Dated: February 22, 2007.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E7–3439 Filed 2–27–07; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meeting Notice

AGENCY: Election Assistance Commission.

ACTION: Notice of public meeting for the Technical Guidelines Development Committee.

DATE AND TIME: Thursday, March 22, 2007, 9 a.m. to 5:30 p.m. EST; Friday, March 23, 2007, 8:30 a.m. to 2 p.m. EST.

PLACE: National Institute of Standards and Technology, 100 Bureau Drive, Building 101, Employees Lounge, Gaithersburg, Maryland 20899–8900.

STATUS: The meeting will be open to the public. There is no fee to attend, but, due to security requirements, advance registration is required. Registration and additional meeting information will be available at *http://www.vote.nist.gov* by March 1, 2007. This meeting will be Web cast.

SUMMARY: The Technical guidelines Development Committee (the ''Development Committee'') has scheduled a plenary meeting for March 22nd and 23rd, 2007. The Committee was established in 2004 to act in the public interest to assist the Executive Director of the U.S. Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. The Development Committee has held seven previous meetings. The proceedings of these plenary sessions are available at *http://vote.nist.gov.* The purpose of the eighth meeting of the Development Committee will be to review and approve a draft of recommendations for future voluntary voting system guidelines to the EAC. The draft recommendations respond to tasks defined in resolutions passed at the previous Technical Guideline Development Committee meetings.

SUPPLEMENTARY INFORMATION: The Technical Guidelines Development Committee (the ''Development Committee'') has scheduled a plenary meeting for March 22nd and 23rd, 2007. The committee was established pursuant to 42 U.S.C. 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Technical Guidelines Development Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather information and review preliminary reports on issues pertinent to voluntary voting standard recommendations. At subsequent plenary sessions, additional resolutions were debated and adopted by the TGDC. The resolutions define technical work tasks for NIST that assist the TGDC in developing recommendations for voluntary voting system guidelines. The Development Committee approved initial recommendations for voluntary voting system guidelines at the April 20th & 21st, 2005 meeting. The recommendations were formally delivered to the EAC in May 2005 for their review. In September of 2005, the Development Committee began review of preliminary technical reports for the next iteration of voluntary voting system guidelines. The Committee will review and debate draft recommendations for the next iteration of voluntary voting system guidelines at the March 22nd and 23rd, 2007 meeting.

CONTACT INFORMATION: Allan Eustis 301–975–5099. If a member of the public would like to submit comments concerning the Committee's affairs at any time before or after the meeting, written comments should be addressed to the contact person indicated above, c/o NIST, 100 Bureau Drive, Mail Stop 8970, Gaithersburg, MD 20899 or to *voting@nist.gov.*

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 07–918 Filed 2–26–07; 11:48 am]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Office of Science

DOE/NSF Nuclear Science Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, March 8, 2007; 9:20 a.m. to 6 p.m. Friday, March 9, 2007; 8 a.m. to 3:30 p.m.

ADDRESSES: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Brenda L. May, U.S. Department of Energy; SC–26/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; *Telephone:* 301–903–0536.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, March 8, 2007

- Perspectives from Department of Energy and National Science Foundation.
- Presentation of the Neutrino Scientific Assessment Group Subcommittee Report.
- Report from NuPECC.
- Report on the Committee of Visitors.
- Update on the Education and ACI Town Meetings.
- Public Comment (10-minute rule).

Friday, March 9, 2007

- Discussion of Transmittal Letter for the COV Report.
- Status Report from NSAC RIB Task Force.
- Update on Town Meetings I–IV.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May, 301–903–0536 or *Brenda.May@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom

of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on February 23, 2007.

R. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–3502 Filed 2–27–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of Cancellation of Open Meeting.

SUMMARY: This notice announces the cancellation of the March 5, 2007, meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting cancellation be announced in the **Federal Register**. This meeting is being rescheduled to March 12, 2007.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov.*

Issued at Washington, DC on February 23, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–3500 Filed 2–27–07; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

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), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**. This meeting is being held in place of the March 5, 2007 meeting, which was cancelled.

DATES: Monday, March 12, 2007, 2 p.m.–8:30 p.m.

ADDRESSES: Jemez Complex, Santa Fe Community College, 6401 Richards Avenue, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

2 p.m. Call to Order by Deputy Designated Federal Officer (DDFO), Christina Houston
Establishment of a Quorum
Welcome and Introductions by Chair, J.D. Campbell
Approval of Agenda
Approval of Minutes of September 27, 2006, Board Meeting
Approval of Minutes of November 29, 2006, Board Meeting

2:15 p.m. Board Business/Reports
Old Business, Chair, J.D. Campbell
Report from Chair, J.D. Campbell
Report from Department of Energy (DOE), Christina Houston
Report from Executive Director, Menice Santistevan
Other Matters, Board Members
New Business

2:30 p.m. Facilitated Discussion on NNMCAB Member Expectations and Technical vs. Non-technical Work of the NNMCAB, Grace Perez and Pam Henline

3 p.m. Break

3:15 p.m. Committee Business/Reports
A. Environmental Monitoring, Surveillance and Remediation Committee, Pam Henline
B. Waste Management Committee, J.D. Campbell
C. Ad Hoc Committee on Bylaws, Presentation of Proposed Amendments for First Reading, J.D. Campbell
D. Appoint Ad Hoc Committee to Plan Agenda for Annual Retreat, J.D. Campbell

4:15 p.m. Reports from Liaison Members
U.S. Environmental Protection Agency, Rich Mayer
DOE, George Rael
Los Alamos National Security, Andy Phelps
New Mexico Environment Department, James Bearzi

5 p.m. Dinner Break

6 p.m. Public Comment

6:15 p.m. Consideration and Action on Recommendations to DOE

6:45 p.m. Consideration and Action on Draft Public Participation Plan, J.D. Campbell

7 p.m. Los Alamos National Laboratory Environmental Management Program under the estimated Fiscal Year 2007 funding

8 p.m. Round Robin on Board Meeting and Presentations, Board Members

8:15 p.m. Recap of Meeting: Issuance of Press Releases, Editorials, etc., J.D. Campbell

8:30 p.m. Adjourn

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 Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan 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. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's 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 1660 Old Pecos Trail, Suite B, 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 Menice Santistevan 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 February 23, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–3501 Filed 2–27–07; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

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), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, March 14, 2007—6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. *Phone:* (865) 576–4025; *Fax:* (865) 576–5333 or *e-mail: halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main presentation topic will be ''Balance of Reservation Program and the Integrated Facility Disposition Project.''

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey 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. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m., Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on February 23, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–3503 Filed 2–27–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, March 15, 2007—5:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6 p.m.—Call to Order, Introductions, Review of Agenda, and Approval of February Minutes
6:15 p.m.—Deputy Designated Federal Officer's Comments
6:30 p.m.—Federal Coordinator's Comments
6:35 p.m.—Liaisons' Comments
6:45 p.m.—Review of Action Items
6:50 p.m.—Public Comments and Questions
7 p.m.—Presentation: Soil/Rubble Piles Sampling and Analysis Plan
7:30 p.m.—Subcommittee Reports
- Water Disposition/Water Quality Subcommittee
- Community Outreach Subcommittee
- Long Range Strategy/Stewardship Subcommittee
- Executive Committee

7:45 p.m.—Public Comments and Questions
7:55 p.m.—Administrative Issues: Motions, Review of Work Plan, and Review of Next Agenda
8:05 p.m.—Final Comments
8:15 p.m.—Adjourn
Breaks Taken As Appropriate

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr 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. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's 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 Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday through Friday or by writing to Reinhard Knerr, Department of Energy, Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6825.

Issued at Washington, DC on February 23, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–3504 Filed 2–27–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC07–582–000; FERC–582]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

February 22, 2007.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due May 2, 2007.

ADDRESSES: Copies of sample filings of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filings/elibrary.asp*) or from the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–34, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filing, the original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC07–582–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an e-Filing'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERConlinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–582 ''Electric Fees and Annual Charges'' (OMB Control No. 1902–0132) is used by the Commission to implement the statutory provisions of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) which authorizes the Commission to establish fees for its services. In addition, the Omnibus Budget Reconciliation Act of 1986 (OBRA) (42 U.S.C. 7178) authorizes the Commission ''to assess and collect fees and annual charges in any fiscal year in amounts equal to all the costs incurred by the Commission in that fiscal year.'' In calculating annual charges, the Commission first determines the total costs of its electric regulatory program and then subtracts all electric regulatory program filing fee collections to determine the total collectible electric regulatory program costs. It then uses the data submitted under FERC information collection requirement FERC–582 to determine the total megawatt-hours of transmission of electric energy in interstate commerce. This is measured by the sum of the megawatt-hours of all unbundled transmission (including MWh delivered in wheeling transactions and MWh delivered in exchange transactions) and the megawatt-hours of all bundled wholesale power sales (to the extent these later megawatt-hours were not separately reported as unbundled transmission). This information must be reported to three (3) decimal places. Public utilities and power marketers subject to these annual charges must submit FERC–582 to the Secretary of the Commission by April 30 of each year. The Commission issues bills for annual charges, and public utilities and power marketers then must pay the charges within 45 days of the Commission's issuance of the bill.

The Commission's staff uses companies' financial information filed under waiver provisions to evaluate requests for a waiver or exemption of the obligation to pay a fee for an annual charge. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 381, sections 381.108, and 381.302 and part 382, section 382.201(c).

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total annual burden hours
(1)	(2)	(3)	(1)×(2)×(3)
125	1	4	500

Estimated cost burden to respondents is 500 hours/2080 work hours per year × $122,137 annual average salary per employee = $29,360. The estimated annual cost per respondent is $235.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; (7) transmitting, or otherwise disclosing the information; and (8) requesting *e.g.* waiver or clarification of requirements.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities, which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of

the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3485 Filed 2–27–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–446–002]

Gulf South Pipeline Company, LP; Notice of Amended Application

February 22, 2007.

Take notice that on February 20, 2007, Gulf South Pipeline Company, LP (Gulf South), 20 East Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP06–446–002, an amendment to its pending application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) in which it seeks authorization to site, construct, and operate facilities, and to abandon by lease to Texas Gas Transmission, LLC (Texas Gas), 62,180 Dth/day of capacity on the facilities proposed in Docket No. CP06–446–000 filed September 1, 2006. In the amended application, Gulf South proposes to increase in pipeline wall thickness and internal pipe coating for 71.1 miles of pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The Commission staff will determine if this amendment will have an effect on the schedule for the environmental review of this project. If necessary, a revised Notice of Schedule for Environmental Review will be issued within 90 days of this Notice. The instant filing may be also viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application may be directed to J. Kyle Stephens, Director of Certificates, 20 East Greenway Plaza, Houston, Texas 77046 or by telephone at 713–544–7309 or telecopy to 713–544–3540.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 5, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3486 Filed 2–27–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–407–000]

High Prairie Wind Farm II, LLC; Notice of Issuance of Order

February 22, 2007.

High Prairie Wind Farm, LLC (High Prairie) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. High Prairie also requested waivers of various Commission regulations. In particular, High Prairie requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by High Prairie

On February 20, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by High Prairie should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is March 26, 2007.

Absent a request to be heard in opposition by the deadline above, High Prairie is authorized to issue securities

and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of High Prairie, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of High Prairie's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3489 Filed 2–27–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–390–000]

Nevada Solar One, LLC; Notice of Issuance of Order

February 22, 2007.

Nevada Solar One, LLC (Nevada Solar One) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Nevada Solar One also requested waivers of various Commission regulations. In particular, Nevada Solar One requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Nevada Solar One.

On February 20, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Nevada Solar One should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is March 26, 2007.

Absent a request to be heard in opposition by the deadline above, Nevada Solar One is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Nevada Solar One, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Nevada Solar One's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3488 Filed 2–27–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–84–000]

Viking Gas Transmission Company; Notice of Application

February 22, 2007.

Take notice that on February 15, 2007, Viking Gas Transmission Company (Viking), 13710 FNB Parkway, Omaha, Nebraska 68154, filed in Docket No. CP07–84–000, an application pursuant to section 7(b) of the Natural Gas Act, for an order to abandon in place Compressor Unit 1A, with appurtenances at the Hallock Compressor Station located in Kittson County, Minnesota, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Patricia Anderson, General Manager Rates, Regulatory Affairs, ONEOK Partners GP, L.L.C., 100 West 5th Street, 12th Floor Tulsa, OK 74103, phone: (918) 588–7729.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party

to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments protests and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's web (*www.ferc.gov*) site under the ''e-Filing'' link.

Comment Date: March 15, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3487 Filed 2–27–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–421–000]

Transcontinental Gas Pipe Line Corporation; Notice of Public Meeting for the Proposed Potomac Expansion Project

February 22, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) is holding a public meeting for Transcontinental Gas Pipe Line Corporation's (Transco's) proposed Potomac Expansion Project. The project would consist of the construction of about 20 miles of new 42-inch-diameter pipeline in three loops located in Campbell, Pittsylvania, and Fairfax Counties, Virginia; and various aboveground facilities, including a proposed pig launcher/receiver facility at milepost 1,586.17 in Fairfax County, Virginia.

The meeting will be on Friday, March 2, 2007, at 7 p.m. (EST) in the Virginia Run Community Center, 15355 Wetherburn Court, Centreville, VA 20120.

This event is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3490 Filed 2–27–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2003–0017; FRL–8282–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; Underground Injection Control (UIC) Program; EPA ICR No. 0370.19; OMB Control No. 2040–0042

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on April 30, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 30, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2003–0017, by each item in the text, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: OW-Docket@epa.gov.*
- *Mail:* Environmental Protection Agency, *Mailcode:* MC 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2003–0017 identified by the Docket ID. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of

special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Robert E. Smith, Office of Ground Water and Drinking Water, Drinking Water Protection Division/Underground Injection Control Program, Mailcode: 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–564–3895; *fax number:* 202–564–3756; e-mail *address: smith.robert-eu@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2003–0017, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Water Docket, Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone for the Water Docket is 202–566–2426.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When 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 and provide specific examples.

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. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID 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.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are owners and operators underground injection wells, State Underground Injection Control (UIC) primacy agencies, and in some instances, U.S. EPA Regional offices and staff.

Title: Information Collection Request for the Underground Injection Control Program.

ICR numbers: EPA ICR No. 0370.19, OMB Control No. 2040–0042.

ICR status: This ICR is currently scheduled to expire on April 30, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Underground Injection Control (UIC) Program under the Safe Drinking Water Act established a Federal and State regulatory system to protect underground sources of drinking water (USDWs) from contamination by injected fluids. Injected fluids include over 9 billion gallons of hazardous waste per year and over two billion gallons of brine from oil and gas operations every day as well as automotive, industrial, sanitary and other wastes. Owners/operators of underground injection wells must obtain permits, conduct environmental monitoring, maintain records, and report results to EPA or the State UIC primacy agency. States must report to EPA on permittee compliance and related information. The mandatory information is reported using standardized forms and annual reports, and the regulations are codified at 40 CFR Parts 144 through 148. The data are used by UIC authorities to ensure the protection of underground sources of drinking water.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.35 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 which have subsequently changed; 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 Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 38,824.

Frequency of response: yearly, semi-annually, quarterly, and other.

Estimated total average number of responses for each respondent: 10.96.

Estimated total annual burden hours: 1,000,648 hours.

Estimated total annual costs: $117,142,617. This includes an

estimated burden cost of $34,934,361 and an estimated cost of $82,208,255 for capital investment or maintenance and operational costs.

In its ''Terms of Clearance'' for the current ICR, OMB asked EPA to report on its efforts to reduce burden on owners and operators of UIC injection wells. In response to this request, the Agency has undertaken an effort to study where further paperwork burden reduction is feasible. The UIC Program is reviewing UIC regulations requiring paperwork reporting/recordkeeping and then evaluating potential for burden reduction. Past efforts to reduce burden focused on analyzing data needs of the UIC Program and identifying ways to reduce burden on State primacy agencies that submit information to EPA. This effort resulted in reduced frequency with which states must submit several 7520 Federal reporting forms. Current efforts focus on how to reduce burden on owners and operators that submit specific 7520 owner/operator reporting forms. Areas of consideration are combining/revising some 7520 reporting forms, eliminating certain reporting requirements, eliminating data elements from the 7520 forms submitted by operators, reducing frequency and using options such as electronic data entry and transfer systems. EPA prepared a report that summarizes these efforts. This report can be found in the Water Docket for the UIC Program ICR under Docket ID No. EPA–HQ–OW–2003–0017 and is available for viewing in person at the EPA/DC Public Reading Room which is in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC.

Are There Changes in the Estimates From the Last Approval?

There is a decrease of 333,406 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease primarily reflects abatement of permitting and closure under the 1999 Class V Rule; reduced Class V well inventory activities; and a reduction in the Class II inventory, particularly the number of Class II permit applications that operators will submit during the clearance period. These changes are adjustments.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 23, 2007.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E7–3516 Filed 2–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8282–4]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of a New Equivalent Method

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of a new equivalent method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR Part 53, a new equivalent method for measuring concentrations of ozone (O_3) in the ambient air.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hunike, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–3737, e-mail: *Hunike.Elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR Part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR Part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR Part 58 by States and other agencies for determining attainment of the NAAQSs.

The EPA hereby announces the designation of a new equivalent method for measuring concentrations of O_3 in the ambient air. This designation is made under the provisions of 40 CFR Part 53, as amended on December 18, 2006 (71 FR 61271).

The new equivalent method is an automated method (analyzer) that utilizes a measurement principle based on absorption of ultraviolet light by ozone at a wavelength of 254 nm. The newly designated equivalent method is identified as follows:

EQSA–0207–164, ''SIR S.A. Model S–5014 Photometric O_3 Analyzer,'' operated on the 0–500 ppb measurement range, within an ambient temperature range of 20 to 30 degrees C, with a sample inlet particulate filter, and with or without an optional PCMCIA card.

An application for an equivalent method determination for the candidate method based on this ozone analyzer was received by the EPA on August 4, 2006. The sampler is commercially available from the applicant, SIR USA, 1775 Pennsylvania Avenue, NW., Washington, DC 20006 or from SIR Spain, Avda. de la Industria, 3, 28760 Tres Cantos, Spain.

A test analyzer representative of this method has been tested in accordance with the applicable test procedures specified in 40 CFR Part 53 (as amended on December 18, 2006). After reviewing the results of those tests and other information submitted by the applicant in the application, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method. The information submitted by the applicant in the application will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference or equivalent method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.*, configuration or operational settings) specified in the applicable designation method description (see the identifications of the method above).

Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution

Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Part 1,'' EPA–454/R–98–004 (available at *http://www.epa.gov/ttn/amtic/qabook.html*). Vendor modifications of a designated reference or equivalent method used for purposes of Part 58 are permitted only with prior approval of the EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR Part 58.

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in 40 CFR Parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with Part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a designation label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR Part 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this new equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR Part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. E7–3523 Filed 2–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0084; FRL–8116–1]

Dimethoate; Modification and Closure of Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's intention to modify certain risk mitigation measures that were imposed as a result of the 2006 Reregistration Eligibility Decision (RED) for the pesticide dimethoate, and opens a public comment period on these changes. EPA conducted this reassessment of the dimethoate RED in response to public comments received. The commentors have requested that the Agency make certain modifications in the dimethoate RED label requirements including: Specifying a maximum seasonal application rate, rather than a maximum number of applications per season; and increased seasonal rates for peppers and cherries.

DATES: Comments must be received on or before March 30, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0084, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0084. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-

mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jude Andreasen, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9342; fax number: (703) 308–7070; e-mail address: *andreasen.jude@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. 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. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. In 2006, EPA issued an RED for dimethoate under section 4(g)(2)(A) of FIFRA. In response to a notice of availability published in the **Federal Register** on July 12, 2006 (71 FR 39312) (FRL–8064–9), the Agency received comments from the technical registrant and commentors. These comments resulted in several changes to the dimethoate RED, namely: 1. Replacement of maximum number of applications per season with a seasonal maximum rate; and 2. Increased seasonal rates for peppers and cherries. The comments, Response to Comments Memorandum, and the revised RED with updated label table can be found in the electronic docket at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2005–0084.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for dimethoate. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the dimethoate RED will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended 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: February 15, 2007.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–3320 Filed 2–27–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0088; FRL–8114–5]

Pesticide Product Registration Approval; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces and requests comments on an application to register the pesticide product Isomate-CM/LR TT containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before March 30, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0088, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0088. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Andrew Bryceland, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number:(703) 305-6928; e-mail address: *bryceland.andrew@epa.gov*

SUPPLEMENTARY INFORMATION

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Did EPA Approve the Application?

The Agency approved the application on January 19, 2007, after considering all required data on risks associated with the proposed use of Z-9-tetradecen-1-yl acetate, Z-11-tetradecen-1-ol, and Z-11-tetradecenal, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of Z-9-tetradecen-1-yl acetate, Z-11-tetradecen-1-ol, and Z-11-tetradecenal when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

The company submitted an application to EPA to register the pesticide product Isomate –CM/LR TT containing the three new active ingredients: Z-9-tetradecen-1-yl acetate, Z-11-tetradecen-1-ol, and Z-11-tetradecenal (EPA File Symbol 53575-31) containing the same chemicals at 4.34%, 1.05%, and 1.00% respectively. However, since the notice of receipt of the application to register the product as required by section 3(c)(4) of FIFRA, as amended, was not published in the **Federal Register**, interested parties may submit comments on or before March 30, 2007 for this product only.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: February 15, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7–3321 Filed 2–27–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0005; FRL–8112–5]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations and providing a public comment period.

DATES: Unless a request is withdrawn by August 27, 2007 or March 30, 2007 for registrations for which the registrant requested a waiver of the 180–day comment period, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than August 27, 2007 or March 30, 2007, whichever is applicable. Comments must be received on or before August 27, 2007 or March 30, 2007, for those registrations where the 180–day comment period has been waived.

ADDRESSES: Submit your comments and your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2007–0005, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Written withdrawal requests should be to the Attention of: John Jamula, Information Technology and Resources Management Division (7502P), at the address above.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Dockets normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0084. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building),

2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, 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 information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

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

2. Tips for preparing your comments. When submitting comments, remember to:

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iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 162 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration no.	Product Name	Chemical Name
000100 CO–98–0011	Mefenoxam EC	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
000100 ID–02–0009	Cyclone Concentrate/Gramoxone Max	Paraquat dichloride
000100 LA–01–0005	Cyclone Concentrate/Gramoxone Max	Paraquat dichloride
000100 LA–01–0006	Cyclone Concentrate/Gramoxone Max	Paraquat dichloride
000100 MI–95–0007	Tilt Fungicide	Propiconazole
000100 MO–95–0003	Gramoxone Extra Herbicide	Paraquat dichloride
000100 OK–93–0004	Aatrex 4l Herbicide	Atrazine
000100 OK–93–0005	Aatrex Nine-0 Herbicide	Atrazine
000100 OR–01–0019	Actara 25 Wg	Thiamethoxam
000100 OR–96–0013	Tilt Gel Fungicide	Propiconazole
000100 TX–03–0004	Cyclone Concentrate/Gramoxone Max	Paraquat dichloride
000100 TX–03–0009	Gramoxone Max Herbicide	Paraquat dichloride
000100 TX–04–0006	Cyclone Concentrate Herbicide	Paraquat dichloride
000100 WA–04–0012	Cyclone Concentrate Herbicide	Paraquat dichloride
000100 WA–04–0013	Cyclone Concentrate Herbicide	Paraquat dichloride
000228–00154	Riverdale Granular Lawn Weed Killer	2,4-D, 2-ethylhexyl ester
		Mecoprop (and salts and esters)

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000228–00253	Riverdale MCPP-2 Amine	Mecoprop, dimethylamine salt
000228–00265	Riverdale Dissolve (r)	2,4-D, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
000228–00275	Riverdale MCPP-80 Tm Amine Water Soluble	Mecoprop, dimethylamine salt
000228–00282	Riverdale Dri D + Dp Amine	2,4-D, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
000228–00283	Riverdale Triplet Water Soluble	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
000228–00287	Riverdale Triplet MC Dri	Dicamba
		2-4,D
		Mecoprop (and salts and esters)
000228–00315	Riverdale Sweet Sixteen Weed and Feed with Triplet	Dicamba
		2-4,D
		Mecoprop (and salts and esters)
000241–00370	Pendulum Plus Fertilizer	Pendimethalin
000264 ID–00–0006	Guthion Solupak 50% Wettable Powder Insecticide	Azinphos-Methyl
000264 OR–90–0025	Sencor DF 75% Dry Flowable Herbicide	Metribuzin
000264 OR–97–0022	Sencor DF 75% Dry Flowable Herbicide	Metribuzin
000279–03135	Bistar T&O EC Insecticide	Piperonyl butoxide
		Bifenthrin
000478–00044	Real-Kill Spot Weed Killer	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
000499–00244	Whitmire X-Clude Pt 1600 R	4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
000499–00247	Whitmire X-Clude Pt 1600 P	4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
000499–00310	Whitmire PT 566 Pyrethrum	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
000499–00313	Whitmire PT 566 Hc Insect Fogger	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrum
		Pyrethrins
000499–00328	Whitmire PT18H Dairy and Farm Insect Fogger and Repellant	Piperonyl butoxide

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
		Pyrethrins
		Permethrin
000499–00329	Whitmire Pt 555 Xlo Contact Insecticide	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
000499–00374	Whitmire PT-565 Plus HO	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
000499–00382	Whitmire PT 1110 Pyrethrum Total Release Insecticide	Piperonyl butoxide
		Pyrethrins
000499–00401	Whitmire PT 564 XLO Contact Insecticide	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
		Prallethrin
000499–00407	Whitmire TC-102 Pyrethrum Dairy Fogger	Piperonyl butoxide
		Pyrethrins
000499–00412	TC 96	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
000499–00415	Whitmire PT 525 Microfill Contact Insecticide	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
000499–00417	Whitmire PT 505 XLO Inspector Contact Insecticide	4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
000499–00431	Whitmire TC-158 Dairy Spray	Piperonyl butoxide
		Pyrethrins
000499–00505	TC 243	4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
000538–00231	Liquid Weed Control	2,4-D, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
000769–00951	Pratt Liquid Weedaway	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000869–00216	Green Light Wipe-Out	2,4-D, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
000869–00217	Green Light Ready-To-Use Wipe-Out	2,4-D, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
000869–00220	Green Light Ready-To-Use Rose & Flower Insect Spray	Piperonyl butoxide
		Pyrethrins
000961–00214	Lebanon Uniform 10-6-4 with 2,4-D Weed and Feed	2,4-D, dimethylamine salt
000961–00263	Lebanon Weed & Feed 10-6-4 with 2,4-D and Mcpp	2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
000961–00334	Green Gold Lawn Weed-R 27-3-3	2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
001021–00023	Pyrocide 20	Pyrethrins
001021–00034	Pyrocide Booster Concentrate E	Piperonyl butoxide
		Pyrethrins
001021–00754	Pyrocide Intermediate 6441	4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
001021–00755	Pyrocide Intermediate 6440	4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
001021–01127	D-Trans Intermediate 1862	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
001021–01198	Pyrocide Fogging Concentrate 7104	4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
001021–01249	Esbiol Intermediate 1971	S-Bioallethrin
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
001021–01299	Pyrocide Intermediate 7198	Piperonyl butoxide
		Pyrethrins
001021–01394	D-Trans Fogger & Contact Spray-2147	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
001021–01417	D-Trans Industrial and Household Space and Contact Spray	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
001021–01453	Esbiol Fogging Concentrate 2263	S-Bioallethrin

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
001021–01478	Esbiol Fogging Concentrate 2289	S-Bioallethrin
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
001021–01549	Evercide Intermediate 2450	Permethrin
001021–01572	Pyrocide Concentrate 7394	Piperonyl butoxide
		Pyrethrins
001021–01584	Multicide Concentrate 2544	d-Allethrin
		Piperonyl butoxide
		Phenothrin
001021–01673	Evercide Total Release Fogger 2613	4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Pyrethrins
		Permethrin
		Pyriproxyfen
001021–01694	Multicide Concentrate 2739	4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Prallethrin
001021–01839	Permethrin 1.0% Pour on	Permethrin
001021–01840	Permethrin 0.5% RTU Spray	Permethrin
001021–01842	Permethrin 0.25% RTU	Permethrin
001021–01845	Permethrin 2.5% Concentrate	Permethrin
001021–01846	Permethrin 1% Pour on Synergized	Piperonyl butoxide
		Permethrin
002217–00789	Trimec 1144 40% SP	Dicamba
		2-4,D
		Mecoprop (and salts and esters)
002724–00514	Speer Bird Spray	4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Propylene glycol
		Pyrethrins
		Triethylene glycol
002724–00531	Speer Automatic Fogger	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		Phenothrin
002724–00552	Speer 4X Indoor Fogger	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Permethrin
005887–00173	Improved Broadleaf Weed Killer	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
007401–00046	Ferti-Lome Professional Crabgrass Control	Benfluralin
007401–00123	Ferti Lome Tree Borer Crystals	Paradichlorobenzene
007401–00234	Ferti-Lome Systemic Weed & Feed 11-3-6	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
		Mecoprop, dimethylamine salt
007401–00242	Ferti Lome Weed Killer Plus Lawn Food	2-4,D
		Mecoprop (and salts and esters)
007401–00298	Ferti-Lome Crabgrass Preventer	Benfluralin
007401–00381	Ferti-Lome Chickweed & Clover Control	Mecoprop, dimethylamine salt
007401–00382	Hi-Yield Lawn Weed Killer	2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
007401–00413	Ferti-Lome Winterizer & Weed Preventer	Benfluralin
		Oryzalin
007401–00415	Ferti-Lome Weed and Feed Special	Benfluralin
		Oryzalin
008254–00004	"4 the Squirrel" Repellent	Polybutene
008329 NJ–99–0007	Abate 4e Insecticide	Temephos
008660–00007	Sta-Green Weed & Feed 20-3-6	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
008660–00024	Vertgreen Mcpp Clover & Chickweed Killer	Mecoprop, potassium salt
008660–00147	Vertagreen St. Augustine Weed & Feed	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
008660–00148	Supreme Green	2,4-D, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
008660–00169	Ace Lawn Food with Weed Control	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
008660–00170	Ace Lawn Food with Weed Control 22-6-8	2-4,D
		Mecoprop (and salts and esters)
008660–00172	Deep Green Vigoro 23-3-7 Lawn Fertilizer & Weed Control	Dicamba
		2-4,D
		Mecoprop (and salts and esters)
008660–00179	Golden Vigoro Weed Control Plus Lawn Fertilizer 18-4-8	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
008660–00184	Gro-Tone 18 Weed & Feed	Dicamba
		2-4,D
		Mecoprop (and salts and esters)
008660–00185	Gro-Tone 20 Weed & Feed	Dicamba
		2-4,D
		Mecoprop (and salts and esters)
008660–00212	Par Ex Slow Release Fertilizer	Dicamba
		2-4,D
		Mecoprop (and salts and esters)
008660–00221	Park Ridge 18 Weed & Feed	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
008660–00222	Park Ridge 20 Weed & Feed	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
008660–00226	Premium Green Turf Lawn Food with Weed Control	2,4-D, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
008660–00228	Suburban 18 25-3-3 Weed & Feed	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
008660–00229	Suburban 20 Weed & Feed 25-3-3	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
008660–00231	Vigoro Deep Green Weed and Feed	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
008660–00242	Vigoro St. Augustine Grass Lawn Weeder and Feeder	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
008660–00244	Vigoro Weed Control Plus Lawn Fertilizer	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
009367–00007	Kill-O-Cide Fly & Insect Spray	Piperonyl butoxide
		Pyrethrins
009688–00154	Chemsico EH1365 Herbicide	2,4-D, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
009688–00155	Chemsico EH1367 Herbicide	2,4-D, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
009688–00156	EH 1370 Weed & Feed	2,4-D, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
010163 AL–95–0001	Imidan 70-WP Agricultural Insecticide	Phosmet
010163 IN–97–0003	Imidan 70-WP Agricultural Insecticide	Phosmet
010163 OR–99–0055	Diclor Fungicide	Gas cartRidge (as a device for burrowing animal control)
		Dicloran
010163 OR–99–0056	Botran 75 W-Fungicide	Dicloran
010163 WA–01–0032	Imidan 70-WP Agricultural Insecticide	Phosmet
010807–00024	Misty Glycol Air Sanitizer - Lemon/lime Fragrance	Propylene glycol
		Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)
		Triethylene glycol
010807–00037	Misty Air Sanitizer Mint Fragrance	Propylene glycol

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
		Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12)
		Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C12, 32%C14)
		Triethylene glycol
010807–00043	Misty Mizer Air Sanitizer Lime	Propylene glycol
		Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)
		Triethylene glycol
010807–00069	Misty Mizer Insecticide III	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		Piperonyl butoxide
010807–00089	Misty Misticide	4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
010807–00156	Misty Omnicide H.P. Insect Spray	Piperonyl butoxide
		Pyrethrins
010807–00157	Amrep 5005	Piperonyl butoxide
		Pyrethrins
010807–00185	Misty 5013	Piperonyl butoxide
		Tetramethrin
		Permethrin
010807–00192	Misty Residual Insecticide	4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Pyrethrins
		Permethrin
010900–00098	893 Total Release Fogger II	4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Pyrethrins
		Permethrin
019713 CA–00–0030	Drexel Diazinon Insecticide	Diazinon
019713 OR–04–0026	Drexel Diazinon Insecticide	Diazinon
019713 OR–95–0016	Drexel Captan 50w	Captan
019713 WA–95–0034	Drexel Captan 50w	Captan
034704–00218	Clean Crop Mec-Amine Plus	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
034704–00766	Kleenup Grass & Weed Killer Formula II	2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
		Diquat dibromide
		Propanoic acid, 2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)-, butyl ester, (R)-
040849–00070	AT Weed & Grass Killer Concentrate	2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
		Propanoic acid, 2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)-, butyl ester, (R)-
		Nonanoic acid
042750–00138	Nicosulfuron TGAI	Nicosulfuron
042750–00139	Nicosulfuron 75 WDG	Nicosulfuron

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
045220–00001	Pow Herbal Flea Powder	Pyrethrins
046515–00034	Super K-Gro Liquid Weed & Feed Formula II	2,4-D, dimethylamine salt
		Mecoprop, dimethylamine salt
046515–00055	Broadleaf Weed Killer Aerosol	2,4-D, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
051036 MS–96–0002	Micro Flo Chlorpyrifos Termite Concentrate	Chlorpyrifos
062719–00061	Mcpp Amine 4M	Mecoprop, dimethylamine salt
062719–00405	Kelthane MF Agricultural Miticide	Dicofol
062719–00406	Kelthane Technical Agricultural Miticide	Dicofol
062719–00414	Kelthane 50 Agricultural Miticide Wettable Powder	Dicofol
062719 CO–02–0002	Propiconazole EC	Propiconazole
062719 CO–06–0005	Kelthane MF Agricultural Miticide	Dicofol
062719 ID–02–0022	Kelthane MF Agricultural Miticide	Dicofol
062719 LA–02–0003	Propiconazole EC	Propiconazole
062719 ME–95–0009	Kelthane 50 Agricultural Miticide Wettable Powder	Dicofol
062719 MO–02–0001	Propiconazole EC	Propiconazole
062719 OR–02–0031	Kelthane MF Agricultural Miticide	Dicofol
062719 TX–03–0003	Propiconazole EC	Propiconazole
062719 VA–01–0004	Kelthane 50 Agricultural Miticide Wettable Powder	Dicofol
062719 WA–05–0009	Propimax EC	Propiconazole
062719 WA–89–0027	Kelthane MF Agricultural Miticide	Dicofol
062719 WA–91–0043	Kerb 50W Herbicide	Propyzamide
067603–00002	TSD House & Garden/flea and Tick Spray	Piperonyl butoxide
		Pyrethrins
		Permethrin
067603–00003	TSD Indoor Outdoor Insect Spray	Piperonyl butoxide
		Tetramethrin
		Permethrin
069061–00004	Davis Triple Pyrethrines Flea & Tick Shampoo	2,5-Pyridinedicarboxylic acid, dipropyl ester
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
071368–00009	DPD-Amine Herbicide	2,4-D, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
071368–00012	Chipco Weedone DPC Amine Herbicide	2,4-D, triisopropanolamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate

A request to waive the 180–day comment period has been received for the following registrations: 228–154; 228–253; 228–265; 228–275; 228–282; 228–283; 228–287; 228–315; 279–3135; 499–244; 499–247; 499–310; 499–313;

499–328; 499–329; 499–374; 499–382; 499–401; 499–407; 499–412; 499–415; 499–417; 499–431; 499–505; 538–231; 769–951; 869–216; 869–217; 961–214; 961–263; 961–334; 2217–789; 2724–531; 2724–552; 5887–173; 7401–46; 7401–298; 7401–413; 7401–415; 9367–7; 10807–69; 10807–89; 10807–156;10807–57; 10807–185; 10807–192; 34704–218; 34704–766; 40849–70; 62719–61; 69061–4; 71368–9; 71368–12; ID–0000–06. Therefore, the 30–day comment period will apply for these registrations.

Unless a request is withdrawn by the registrant by August 27, 2007 or by March 30, 2007 for those registrations with a 30–day comment period, orders will be issued canceling all of these registrations. A person may submit comments to EPA as provided in **ADDRESSES** and Unit I. of the **SUPPLEMENTARY INFORMATION** above. However, because FIFRA section 6(f)(1)(A) allows a registrant to request cancellation of its pesticide registrations at any time, users or anyone else desiring retention of those pesticides listed in Table 1 may want to contact the applicable registrant in Table 2 directly during this period to request that the registrant retain the pesticide registration or to discuss the possibility of transferring the registration. A user seeking to apply for its own registration of that pesticide may submit comments requesting EPA not to cancel a registration until its registration is granted.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company no.	Company Name and Address
000100	Syngenta Crop Protection, Inc., Attn: Regulatory Affairs, P.O. Box 18300, Greensboro, NC 27419–8300
000228	Nufarm Americas Inc., 150 Harvester Drive Suite 200, Burr Ridge, IL 60527
000241	BASf Corp., PO Box 13528, Research Triangle Park, NC 277093528
000264	Bayer Cropscience LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709
000279	FMC Corp. Agricultural Products Group, 1735 Market St, Philadelphia, PA 19103
000478	Realex, Div of United Industries Corp., P.O. Box 142642, St Louis, MO 63114–0642
000499	Whitmire Micro-Gen Research Laboratories Inc., 3568 Tree Ct Industrial Blvd, St Louis, MO 63122–6682
000538	Scotts Co., The, 14111 Scottslawn Rd, Marysville, OH 43041
000769	Value Gardens Supply, LLC, d/b/a Value Garden Supply, P.O. Box 585, Saint Joseph, MO 64502
000869	Green Light Co., P.O. Box 17985, San Antonio, TX 78217
000961	Lebanon Seaboard Corp., 1600 E. Cumberland Street, Lebanon, PA 17042
001021	Mclaughlin Gormley King Co, 8810 Tenth Ave North, Minneapolis, MN 55427–4372
002217	PBI/Gordon Corp., P.O. Box 014090, Kansas City, MO 64101–0090
002724	Wellmark International, 1501 E. Woodfield Rd., Suite 200 W., Schaumburg, IL 60173
005887	Value Gardens Supply, LLC, d/b/a Value Garden Supply, P.O. Box 585, Saint Joseph, MO 64502
007401	Brazos Associates, Inc., Agent For: Voluntary Purchasing Group Inc., 1806 Auburn Drive, Carrollton, TX 75007–1451
008254	Bird Control International Corp., 1393 E. Highland Rd., Twinsburg, OH 44087
008329	Clarke Mosquito Control Products Inc., 159 N. Garden Ave, Roselle, IL 60172
008660	United Industries Corp., d/b/a Sylorr Plant Corp., P.O. Box 142642, St. Louis, MO 63114–0642
009198	The Anderson's Lawn Fertilizer Division, Inc., dba/ Free Flow Fertilizer, P.O. Box 119, Maumee, OH 43537
009367	Theochem Laboratories, Inc., 7373 Rowlett Park Drive, Tampa, FL 33610–1141
009688	Chemsico, Div of United Industries Corp., P.O. Box 142642, St Louis, MO 63114–0642
010163	Gowan Co, P.O. Box 5569, Yuma, AZ 85366–5569
010404	Lesco Inc., 1301 E. 9th Street, Suite 1300, Cleveland, OH 44114–1849
010807	Amrep, Inc., 990 Industrial Dr, Marietta, GA 30062
010900	Sherwin-Williams Diversified Brands, 601 Canal Rd., Cleveland, OH 44113
019713	Drexel Chemical Co., P.O. Box 13327, Memphis, TN 38113–0327
034704	Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632
040849	Enforcer Products, A Division of Acuity Specialty Products Group, Inc, 1420 Seaboard Industrial Blvd., Atlanta, GA 30318
042750	Albaugh, Inc., Agent For: Albaugh Inc., P.O. Box 2127, Valdosta, GA 31604–2127
045220	Natural Animal Health Products, Inc., P.O. Box 1177, St Augustine, FL 32085
046515	Celex, Division of United Industries Corp., P.O. Box 142642, St Louis, MO 63114–0642
051036	BASF Sparks LLC, P.O. Box 13528, Research Triangle Park, NC 27709
062719	Dow Agrosciences LLC, 9330 Zionsville Rd 308/2E, Indianapolis, IN 46268–1054
067603	Sherwin-Williams Diversified Brands, 601 Canal Rd., Cleveland, OH 44113
069061	Technology Sciences Group, Inc., Agent For: Sivad Mfg. & Packaging Inc., 4061 North 156th Drive, Goodyear, AZ 85338
071368	Nufarm, Inc., 150 Harvester Drive Suite 200, Burr Ridge, IL 60527

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1)(A) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the Federal Register and provide for a 30–day public comment period. In addition, where a pesticide is registered for a minor agricultural use and the Administrator determines that cancellation or termination of that use would adversely affect the availability of the pesticide for use, FIFRA section 6(f)(1)(C) requires EPA to provide a 180–day period before approving or rejecting the section 6(f) request unless:

1. The registrant requests a waiver of the 180-day period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before August 27, 2007 or before March 30, 2007 for those registrations where the 180–day comment period has been waived. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a Data Call-In. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products 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 action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 12, 2007.

Robert Forrest,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. E7–3322 Filed 2–27–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006-0936; FRL–8115–5]

Notice of Filing of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before March 30, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest, by one of the following methods. Refer to Unit II. for specific docket ID numbers for each pesticide petition.

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the assigned docket ID number and the pesticide petition number of interest. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: The person listed at the end of the pesticide petition summary of interest.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Docket ID Numbers

When submitting comments, please use the docket ID number and the pesticide petition number of interest, as shown in the table.

PP Number	Docket ID Number
PP 6F7065	EPA–HQ–OPP–2007–0099
PP 6F7161	EPA–HQ–OPP–2007–0029
PP 6F7162	EPA–HQ–OPP–2007–0030
PP 6H7114	EPA–HQ–OPP–2007–0096

III. What Action is the Agency Taking?

EPA is printing notice of the filing of pesticide petitions received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions included in this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

New Tolerance

1. *PP 6F7065.* (Docket ID number EPA–HQ–OPP–2007–0099). Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808, proposes to establish a tolerance for residues of the insecticide flubendiamide (NNI-0001), (N^2-[1,1-dimethyl-2-(methylsulfonyl)ethyl]-3-iodo-N^1-[2-methyl-4-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1,2-benzenedicarboxamide) in or on food commodities almond, hulls at 9.0 parts per million (ppm); *brassica*, leafy greens subgroup at 6.0 ppm; *brassica*, head and stem subgroup at 0.60 ppm; corn, field, grain at 0.02 ppm; corn, field, forage at 8.0 ppm; corn, field, stover at 15.0 ppm; corn, pop, grain at 0.02 ppm; corn, pop, stover at 15.0 ppm; corn, sweet, kernel plus cob with husks removed at 0.02 ppm; corn, sweet, forage at 9.0 ppm; corn, sweet, stover at 25.0 ppm; cottonseed at 2.0 ppm; cotton, gin byproduct at 60.0 ppm; fruit, pome group at 0.7 ppm; fruit, stone group at 1.6 ppm; grape at 1.4 ppm; nut, tree group at 0.06 ppm; okra at 0.30 ppm; vegetable, cucurbit group at 0.20 ppm; vegetable, fruiting group at 0.30 ppm; and vegetable, leafy, except *brassica* at 11.0 ppm; in or on rotational crop commodities alfalfa, forage at 0.15 ppm; alfalfa, hay at 0.04 ppm; barley, hay at 0.04 ppm; barley, straw at 0.07 ppm; buckwheat at 0.07 ppm; clover, forage at 0.15 ppm; clover, hay at 0.04; grass, forage at 0.15 ppm; grass, hay at 0.04 ppm; grass, silage at 0.27 ppm; millet, pearl, forage at 0.15 ppm; millet, pearl hay at 0.04 ppm; millet, proso, forage at 0.15 ppm; millet, proso, hay at 0.04 ppm; millet, proso, straw at 0.07 ppm; oats, forage at 0.15 ppm; oats, hay at 0.04 ppm; oats, straw at 0.07 ppm; rye, forage at 0.15 ppm; rye, straw at 0.07 ppm; sorghum, grain, forage at 0.03 ppm; sorghum, grain, stover at 0.06 ppm; soybean, forage at 0.02 ppm; soybean, hay at 0.04 ppm; teosinte, forage at 0.15 ppm; teosinte, hay at 0.04 ppm; teosinte, straw at 0.07 ppm; triticale, forage at 0.15 ppm; triticale, hay at 0.04 ppm; triticale, straw at 0.07 ppm; wheat, forage at 0.15 ppm; wheat, hay at 0.03 ppm; wheat, straw at 0.03 ppm; and in or on animal commodities cattle, liver at 0.60 ppm; cattle, kidney at 0.60 ppm; cattle, muscle at 0.10 ppm; cattle, fat at 0.80 ppm; eggs at 0.03 ppm; goat, liver at 0.60 ppm; goat, kidney at 0.60 ppm; goat, muscle at 0.10 ppm; goat, fat at 0.80 ppm; horse, liver at 0.60 ppm; horse, kidney at 0.60 ppm; horse, muscle at 0.10 ppm; horse, fat at 0.80 ppm; hog, liver at 0.60 ppm; hog, kidney at 0.60 ppm; hog, muscle at 0.10 ppm; hog, fat at 0.80 ppm; milk at 0.20 ppm;

poultry, fat at 0.08 ppm; poultry, liver at 0.03 ppm; poultry, muscle at 0.01 ppm; sheep, liver at 0.60 ppm; sheep, kidney at 0.60 ppm; sheep, muscle at 0.10 ppm; sheep, fat at 0.80 ppm. Independently validated analytical methods for plants, plant products, and animal matrices suitable for enforcement purposes have been submitted for measuring NNI-0001. Typically, plant matrices samples are extracted, concentrated, and quantified by liquid chromatography/tandem mass spectrometry (LC/MS/MS) using deuterated internal standards. Contact: Carmen Rodia, (703) 306-0327, e-mail address: *rodia.carmen@epa.gov*.

2. *PP 6F7161*. (Docket ID number EPA–HQ–OPP–2007–0029). Bayer CropScience LLC, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the herbicide glufosinate-ammonium and its metabolites expressed as butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid (expressed as glufosinate free acid equivalents) in or on food commodities aspirated grain fractions at 25.0 parts per million (ppm); non-transgenic canola, meal at 1.1 ppm; non-transgenic canola, seed at 0.4 ppm; non-transgenic field corn, forage at 4.0 ppm; non-transgenic field corn, grain at 0.2 ppm; non-transgenic field corn, stover at 6.0 ppm; non-transgenic soybean at 2.0 ppm; and non-transgenic soybean, hulls at 5.0 ppm. The enforcement analytical method utilizes gas chromatography for detecting and measuring levels of glufosinate-ammonium and its metabolites with a general limit of quantitation (LOQ) of 0.05 ppm. This method allows detection of residues at or above the proposed tolerances. Contact: James Stone, telephone number: (703) 305-7391, e-mail address: *stone.james@epa.gov*.

3. *PP 6F7162*. (Docket ID number EPA–HQ–OPP–2007–0030). Syngenta Crop Protection, Inc., P. O. Box 18300, Greensboro, NC 72409, proposes to establish tolerances for residues of the herbicide mesotrione in or on food commodities asparagus at 0.01 ppm; grass, forage at 0.01 ppm; grass, hay at 0.01 ppm; grass, seed screenings at 0.01 ppm; grass, straw at 0.10 ppm; oats, forage at 0.01 ppm; oats, grain at 0.01 ppm; oats, hay, at 0.01 ppm; oats, straw at 0.01 ppm; okra at 0.01 ppm; rhubarb at 0.01 ppm; sorghum, forage at 0.01 ppm; sorghum, grain at 0.01 ppm; sorghum, stover at 0.01 ppm; sorghum, sweet at 0.01 ppm; and sugarcane at 0.01 ppm. Practical and specific analytical method RAM 366/01 is available for detecting and measuring the level of mesotrione in or on various crop commodities. Contact: James Stone, telephone number: (703) 305-7391, e-mail address: *stone.james@epa.gov*.

Amendment to Existing Tolerance

PP 6H7114. (Docket ID number EPA–HQ–OPP–2007–0096). Pytech Chemicals GmbH, 9330 Zionsville Road, IN 46268, proposes to amend the tolerance in 40 CFR 180.438, section (3) by adding gamma-cyhalothrin to lambda-cyhalothrin. The residue definition under section (3) should read as follows: (3) A food additive tolerance of 0.01 parts per million is established for residues of the insecticide lambda-cyhalothrin (*S*)-alpha-cyano-3-phenoxybenzyl-(Z)-(1*R*,3*R*)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,1-dimethylcyclopropanecarboxylate) and (*R*)-alpha-cyano-3-phenoxybenzyl-(Z)-(1*S*,3*S*)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate, or the isolated active isomer gamma-cyhalothrin (*S*)-alpha-cyano-3-phenoxybenzy-(Z)-(1*R*,3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate. An adequate analytical method is available for enforcement purposes. Contact: Bewanda Alexander, (703) 305-7460, e-mail address: *alexander.bewanda@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 13, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E7–3117 Filed 2–27–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011733–020.

Title: Common Ocean Carrier Platform Agreement.

Parties: A.P. Moller-Maersk A/S; CMA CGM; Hamburg-Süd; Hapag-Lloyd AG; Mediterranean Shipping Company S.A.; and United Arab Shipping Company (S.A.G.) as shareholder parties, and Alianca Navegacao e Logistica Ltda.; Kawasaki Kisen Kaisha Ltd.; MISC Berhad; Mitsui O.S.K. lines Ltd.; Nippon Yusen Kaisha; Safmarine Container Lines N.V.; Senator Lines GmbH; Compania Sud Americana de Vapores, S.A.; Companhia Libra Navegacao; Norasia Container Lines Limited; Tasman Orient Line C.V.; and Emirates Shipping Lines as non-shareholder parties.

Filing Party: Mark J. Fink, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment adds Emirates Shipping Lines as a non-shareholder party to the agreement.

Agreement No.: 011988.

Title: EUKOR/WWL Mexico Space Charter Agreement.

Parties: EUKOR Car Carriers, Inc. (''EUKOR'') and Wallenius Wilhelmsen Logistics AS (''WWL'').

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes EUKOR to charter space to WWL for the carriage of ro-ro and other non-containerized cargo in the trade from Mexico to the United States.

Dated: February 23, 2007.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–3506 Filed 2–27–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comments on its proposal to extend through July 31,

2010 the current OMB clearance for information collection requirements contained in its proposed Affiliate Marketing Rule (or ''proposed Rule''). That clearance expires on July 31, 2007.

DATES: Comments must be filed by April 30, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Affiliate Marketing Rule: FTC File No. R411006'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Room H–135 (Annex J), 600 Pennsylvania Ave., NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

Comments filed in electronic form should be submitted by following the instructions on the Web-based form at *https://secure.commentworks.com/AffiliateMarketingRule*. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the *https://secure.commentworks.com/AffiliateMarketingRule* weblink. If this notice appears at *www.regulations.gov*, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Anthony Rodriguez or Loretta Garrison, Attorneys, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2252.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501–3520, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) Whether the required collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (2) the accuracy of the agency's estimate of the burden of the required collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before April 30, 2007.

The Affiliate Marketing Rule, 16 CFR part 680, was proposed by the FTC under section 214 of the Fair and Accurate Credit Transactions Act (''FACT Act''), Pub. L. No. 108–159 (December 6, 2003). The FACT Act amended the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, which was enacted to enable consumers to protect the privacy of their consumer credit information. As mandated by the FACT Act, the proposed Rule specifies disclosure requirements for certain affiliate companies subject to the Commission's jurisdiction. Except as discussed below, these requirements constitute ''collections of information'' for purposes of the PRA. Specifically, the FACT Act and the proposed Rule require covered entities to provide consumers with notice and an opportunity to opt out of the use of certain information before sending marketing solicitations. The proposed Rule generally provides that, if a company communicates certain information about a consumer (''eligibility information'') to an affiliate, the affiliate may not use that information to make or send solicitations to the consumer unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out.

To minimize compliance costs and burdens for entities, particularly any small businesses that may be affected, the proposed Rule contains model disclosures and opt-out notices that may be used to satisfy the statutory requirements. The proposed Rule also gives covered entities flexibility to satisfy the notice and opt-out requirement by sending the consumer a free-standing opt-out notice or by adding the opt-out notice to the privacy notices already provided to consumers, such as those provided in accordance with the provisions of Title V, subtitle A of the GLBA. For covered entities that choose to prepare a free-standing opt-out notice, the time necessary to prepare it would be minimal because those entities could simply use the model disclosure. For covered entities that choose to incorporate the model opt-out notice into their GLBA privacy notices the time necessary to do so also would be minimal. Arguably, verbatim adoption of the model notice would not even be a PRA ''collection of information.'' [2]

Burden Statement

Except where otherwise specifically noted, staff's estimates of burden are based on its knowledge of the consumer credit industries and knowledge of the entities over which the Commission has jurisdiction. This said, estimating PRA burden of the proposed Rule's disclosure requirements is difficult given the highly diverse group of affected entities that includes affiliated companies which may use certain eligibility information shared by their

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] ''The public disclosure of information originally supplied by the Federal government to the recipient for purpose of disclosure to the public is not included within [the definition of collection of information].'' 5 CFR 1320.3(c)(2).

affiliates to send marketing notices to consumers who are not regulated by a federal financial regulatory agency.

The estimates provided in this burden statement may well overstate actual burden. First, an uncertain but possibly significant number of entities subject to the FTC's jurisdiction do not have affiliates and would thus not be covered by section 214 of the FACT Act or the proposed Rule. Second, the Commission's staff does not know how many companies subject to the FTC's jurisdiction under the proposed rule actually share eligibility information among affiliates and, of those, how many affiliates use such information to make marketing solicitations to consumers. The staff considered the wide variations in covered entities and the fact that, in some instances, covered entities may make the required disclosures in the ordinary course of business, apart from the FACT Act Rule, voluntarily as a service to their customers, while still other entities may choose to rely on the exceptions to the proposed Rule's notice and opt-out requirements.[3]

Staff's estimates assume a higher burden will be incurred during the first year of the OMB clearance period with a lesser burden for each of the subsequent two years, since the opt-out notice to consumers is required to be given only once. Institutions may provide for an indefinite period for the opt-out or they may time limit it, but for no less than five years. Given this minimum time period, Commission staff did not estimate burden for preparing and distributing extension notices by entities that limit the duration of the opt-out time period. The relevant PRA time frame for burden calculation is three years from renewed OMB clearance, and the five-year notice period will not begin until this proposed Rule becomes final.

Staff's labor cost estimates take into account: Managerial and professional time for reviewing internal policies and determining compliance obligations; technical time for creating the notice and opt-out, in either paper or electronic form; and clerical time for disseminating the notice and opt-out.[4] In addition, staff's cost estimates presume that the availability of model disclosures and opt-out notices will simplify the compliance review and implementation processes, thereby significantly reducing the cost of compliance. Moreover, the proposed Rule gives entities considerable flexibility to determine the scope and duration of the opt-out. Indeed, this flexibility permits entities to send a single joint notice on behalf of all of its affiliates.

Estimated total annual hours burden: 2,662,000 hours, rounded.

Staff estimates that approximately 1.17 million (rounded) non-GLBA entities under the jurisdiction of the FTC have affiliates and would be affected by the proposed Rule.[5] Staff further estimates that there are an average of 5 businesses per family or affiliated relationship, and that the affiliated entities will choose to send a joint notice, as permitted by the proposed Rule. Thus an estimated 233,400 (rounded) non-GLBA entities may send the new affiliate marketing notice. Staff also estimates that non-GLBA entities under the jurisdiction of the FTC would each incur 14 hours of burden during the first year of the clearance period, comprised of a projected 7 hours of managerial time, 2 hours of technical time, and 5 hours of clerical assistance.

Based on the above, total annual burden for non-GLBA entities during the first year of the clearance period would be approximately 2,646,000 hours and the total annual labor cost would be approximately $86,676,000, rounded.[6] These estimates include the start-up burden and attendant costs, such as determining compliance obligations. Paperwork burden in later years would be significantly lower, with non-GLBA entities each incurring 10 hours of annual burden during the remaining two years of the clearance.[7] Thus, the estimated annual burden for non-GLBA entities, averaged over the three-year clearance period, would be 2,646,000 hours and $66,065,000 in labor costs.

Entities that are subject to the Commission's GLBA privacy notice regulation already provide privacy notices to their customers. Because the FACT Act and the proposed Rule contemplate that the new affiliate marketing notice can be included in the GLBA notices, the burden on GLBA regulated entities would be greatly reduced. Accordingly, the GLBA entities would incur 6 hours of burden during the first year of the clearance period, comprised of a projected 5 hours of managerial time and 1 hour of technical time to execute the notice, given that the proposed Rule provides a model.[8] Staff also estimates that 3,350 GLBA entities under the FTC's jurisdiction would be affected, so that the total annual burden for GLBA entities during the first year of the clearance period would approximate 20,000 hours and total annual labor cost would approximate $673,000.[9] The paperwork burden in subsequent years would be significantly lower, with GLBA entities each incurring 4 hours of annual burden (3 hours of managerial time and 1 hour of technical time) during the remaining two years of the clearance, which amounts to 13,400 hours and $443,540 in labor costs in each of the ensuing two years. Thus, averaged over the three-year clearance period, the estimated annual burden for GLBA entities is 15,600 hours and $520,000 in labor costs.

Cumulatively for both GLBA and non-GLBA entities, the average annual burden over the prospective three-year clearance period, rounded, is approximately 2,662,000 burden hours and $87,349,000 in labor costs. GLB entities are already providing notices to their customers so there are no new capital or non-labor costs, as this notice may be consolidated into their current notices. For non-GLB entities, the rule provides for simple and concise model forms that institutions may use to comply. Thus, any capital or non-labor

[3] Exceptions include, for example, having a preexisting business relationship with a consumer, using information in response to a communication initiated by the consumer or to solicitations authorized or requested by the consumer.

[4] No clerical time was included in staff's burden analysis for GLBA entities as the notice would likely be combined with existing GLBA notices.

[5] This estimate is derived from an analysis of a database of U.S. businesses based on SIC codes for businesses that market goods or services to consumers, which included the following industries: transportation services; communication; electric, gas, and sanitary services; retail trade; finance, insurance, and real estate; and services (excluding business services and engineering, management services). This estimate excludes businesses not subject to the FTC's jurisdiction as well as businesses that do not use data or information subject to the rule.

[6] The figure is derived from the estimated 7 hours of managerial labor at $34.21 per hour; 2 hours of technical labor at $29.80 per hour; and 5 hours of clerical labor at $14.44 per hour (a combined $371.27) for the estimated 233,400+ non-GLBA business families subject to the proposed Rule. The hourly rates are based on average annual Bureau of Labor Statistics National Compensation Survey data, June 2005 (with 2005 as the most recent whole year information available at the BLS Web site). *http://www.bls.gov/ncs/ocs/sp/ncbl0832.pdf* (Table 1.1).

[7] This estimate assumes that in subsequent years, non-GLBA entities would spend 4 hours of managerial time, 1 hour of technical time, and 5 hours of clerical time each year. Thus, the resulting estimated burden for each of the remaining two years of the clearance period would be 2,334,590 hours and approximately $55,759,000 in labor costs.

[8] As stated above, no clerical time is included in the estimate because the notice likely would be combined with existing GLBA notices.

[9] 3,350 GLBA entities × [($34.20 × 5 hours) + ($29.80 × 1 hour)].

costs associated with compliance for these entities are negligible.

William Blumenthal,

General Counsel.

[FR Doc. E7–3397 Filed 2–27–07; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Scientific, Technical and Operational Services for Epidemiology, Surveillance and Laboratory Program, Contract Solicitation Number (CSN) 2006–N–08556

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting of the aforementioned Special Emphasis Panel.

Time And Date: 12 p.m.–3 p.m., March 21, 2007 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of the scientific merit of research applications in response to CSN 2006–N–08556, ''Scientific, Technical and Operational Services for Epidemiology, Surveillance and Laboratory Program.''

Contact Person For More Information: Christine Morrison, PhD., Designated Federal Officer, 1600 Clifton Road, Mailstop D72, Atlanta, GA 30333, telephone (404) 639–3098.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–3470 Filed 2–27–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0425]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Premarket Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 30, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Premarket Notification—21 CFR Part 807; Subpart E—(OMB Control Number 0910–0120)—Extension

Section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) and the implementing regulation under part 807 (21 CFR part 807, subpart E) require a person who intends to market a medical device to submit a premarket notification submission to FDA at least 90 days before proposing to begin the introduction, or delivery for introduction into interstate commerce, for commercial distribution of a device intended for human use. Based on the information provided in the notification, FDA must determine whether the new device is substantially equivalent to a legally marketed device, as defined in § 807.92(a)(3). If the device is determined to be not substantially equivalent to a legally marketed device, it must have an approved premarket approval application (PMA), Product Development Protocol or be reclassified into Class I or Class II before being marketed. The FDA makes the final decision of whether a device is equivalent or not equivalent.

The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250) added section 510(o) to the act to establish new regulatory requirements for reprocessed single-use devices (SUDs). MDUFMA was signed into law on October 26, 2002.

Section 510(o) of the act requires that FDA review the types of reprocessed SUDs subject to premarket notification requirements and identify which of these devices require the submission of validation data to ensure their substantial equivalence to predicate devices. Section 510(o) also requires that FDA review critical and semi-critical reprocessed SUDs that are currently exempt from premarket notification requirements and determine which of these devices require the submission of premarket notifications to ensure their substantial equivalence to predicate devices.

FDA has identified the reprocessed SUDs that require the submission of validation data to date. The requirement to submit validation data for certain reprocessed single-use devices has been incorporated into the premarket notification program. As with all other devices, new premarket notifications for reprocessed SUDs will be required as new manufacturers enter the market or manufacturers with cleared premarket notifications make significant changes to their device. The burden estimates in this document include the burden for submitting premarket notifications for reprocessed SUDs with the burden for all other devices. FDA may amend the lists of reprocessed SUDs that require the submission of premarket notifications with validation data as necessary.

Section 807.81 states when a premarket notification is required. A premarket notification is required to be submitted by a person who is:

- Introducing a device to the market for the first time;
- Introducing or reintroducing a device which is significantly changed or modified in design, components, method of manufacturer, or the intended use that could affect the safety and effectiveness of the device.

Section 807.87 specifies information required in a premarket notification submission.

Section 204 of the Food and Drug Administration Modernization Act

(FDAMA) amended section 514 of the act (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions including premarket notifications or other requirements. FDA has published and updated the list of recognized standards regularly since enactment of FDAMA and has allowed 510(k) submitters to certify conformance to recognized standards to meet the requirements of § 807.87. Certification of conformance to a recognized standard may allow a manufacturer to submit an abbreviated 510(k). FDA is now seeking approval of a form (Form FDA 3654) that will standardize certification of conformance to a recognized standard. FDA believes that use of this form will simplify the certification process for 510(k) submitters and the review process for FDA.

Form FDA 3514, a summary cover sheet form, has been created to assist respondents in categorizing 510(k) information for submission to FDA. This form also assists respondents in categorizing information for other FDA medical device programs such as PMAs, investigational device exemptions, and humanitarian device exemptions The total burden (1,000 hours) for Form FDA 3514 has been included in this information collection. Form FDA 3654 is used in the following information collections: 0910–0078, 0910–0231, and 0910–0332, but the burden is approved under this information collection (0910–0120).

Under § 807.87(h), each 510(k) submitter must include in the 510(k) either a summary of the information in the 510(k) (510(k) summary) or a statement certifying that the submitter will make available upon request the information in the 510(k) (510(k) statement). If the 510(k) submitter includes a 510(k) statement in the submission, § 807.93 requires that the official correspondent of the firm make available within 30 days of a request all information included in the submitted premarket notification on safety and effectiveness. This information will be provided to any person within 30 days of a request if the device described in the premarket notification submission is determined to be substantially equivalent. The information provided will be a duplicate of the premarket notification submission including any safety and effectiveness information, but excluding all patient identifiers and trade secret and confidential information.

In the **Federal Register** of November 3, 2006 (71 FR 64711), FDA published a 60-day notice requesting public comments on the proposed collection of information. In response to that notice, no comments were received.

The most likely respondents to this information collection will primarily be medical device manufacturers including reprocessors of single-use devices, and initial importers of devices.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	FDA Form Number	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
807 Subpart E (807.81, 807.87, 807.92, & 807.93)		3,700	1	3,700	80	296,000
807.87	3514	1,956	1	1,956	0.5	978
807.90(a)(3)	3541	400	1	400	0.25	100
807.87(d) and (f)	3654	150	1	150	1	150
Totals						297,228

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
807.93	2,000	10	20,000	0.5	10,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based these estimates on conversations with industry and trade association representatives, and from internal review of the documents listed in tables 1 and 2 of this document.

Dated: February 22, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–3444 Filed 2–27–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0193]

Guidance for Industry: Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps),'' dated February 2007. The guidance document assists establishments with making eligibility determinations for donors of human cells, tissues, and cellular and tissue-based products. The guidance announced in this document finalizes the draft guidance, ''Guidance for Industry: Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps),'' dated May 2004. This guidance also finalizes the draft guidance, ''Guidance for Industry: Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps),'' dated June 2002 (Docket No. 2002D–0266).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Paul E. Levine, Jr., Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps),'' dated February 2007. The guidance announced in this document assists HCT/P establishments with complying with the requirements under part 1271 (21 CFR part 1271), subpart C. These regulations require HCT/P establishments to perform an eligibility determination for most cell and tissue donors, based on donor testing and screening for relevant communicable disease agents and diseases. This guidance applies only to cells and tissues procured on or after the effective date of the regulations contained in part 1271, subpart C (effective date May 25, 2005). This guidance does not replace the guidance on 21 CFR part 1270, ''Guidance for Industry: Screening and Testing of Donors of Human Tissue Intended for Transplantation,'' dated July 29, 1997, which continues to apply to certain tissues recovered before May 25, 2005.

In the **Federal Register** of June 25, 2002 (67 FR 42789), FDA announced the availability of the draft guidance entitled ''Guidance for Industry: Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps),'' dated June 2002. The draft guidance provides information intended to assist manufacturers of HCT/Ps in minimizing the risk of transmission of CJD and vCJD by HCT/P donors that have been possibly exposed to the agents of CJD and vCJD.

In the **Federal Register** of May 25, 2004 (69 FR 29835), FDA announced the availability of the draft guidance entitled ''Guidance for Industry: Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps),'' dated Ma 2004. The draft guidance provided to HCT/P establishments recommendations for the appropriate screening and testing of cell and tissue donors for relevant communicable disease agents and diseases, and recommendations for complying with the regulations for eligibility determination for donors of HCT/Ps.

FDA issued these two draft guidances to assist manufacturers in minimizing the risk of communicable disease transmission by donors of HCT/Ps. FDA received numerous comments on the two draft guidances and those comments were considered as the guidance was finalized. Based on these comments and additional data, FDA has identified West Nile Virus, Sepsis, and Vaccinia as relevant communicable disease agents or diseases (RCDAD). On the other hand, FDA has not included severe acute respiratory syndrome (SARS-CoV) as an RCDAD in this guidance because there has been no laboratory-confirmed person-to-person transmission of SARS-CoV worldwide since July 2003. In addition, the guidance recommends nucleic acid amplification testing (NAT) for human immunodeficiency virus (HIV) and hepatitis C virus (HCV) for both living and cadaveric donors. The guidance also modifies and/or clarifies the following:

- Recommendations for risk factors for vCJD;
- Physical examination of a living HCT/P donor;
- Exceptions to the requirement for determining donor eligibility and appropriate labeling;
- Screening criteria for HIV–1 group O, viral hepatitis, syphilis, *Chlamydia trachomatis* and *Neisseria gonorrhea*;
- Deferral criteria for receipt of human-derived clotting factors;
- Procedures for communicable disease testing laboratories;
- FDA's approach to identifying new RCDADs; and
- Use of gestational carriers or surrogates.

The guidance announced in this document finalizes the previously described draft guidances dated June 2002 and May 2004. The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative

approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 1271, subpart C have been approved under OMB Control No. 0910–0543. The collections of information in part 1271, subpart D have been approved under OMB Control No. 0910–0559.

III. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance announced in this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/cber/guidelines.htm*or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: February 21, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–3445 Filed 2–27–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0021]

Draft Guidance for Industry on Advisory Committee Meetings: Preparation and Public Availability of Information Given to Advisory Committee Members; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Advisory Committee Meetings—Preparation and Public Availability of Information Given to Advisory Committee Members.'' This guidance is intended to provide information to industry sponsors, applicants, and petitioners on the development, preparation, or submission of briefing materials that will be given to advisory committee members as background information prior to open FDA advisory committee meetings. The guidance will help sponsors develop, organize, and submit advisory committee briefing materials for public release and should help minimize the time and resources spent in preparing these materials for public availability. The guidance also describes the process FDA intends to follow when we make briefing materials available to the public.

DATES: Submit written or electronic comments on the draft guidance document by April 30, 2007. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to Office of Policy (HF–11), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your request. Submit written comments on the draft guidance to Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Poppy Kendall, Food and Drug Administration (HF–11), 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360, FAX: 301–594–6777, e-mail: *poppy.kendall@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Advisory Committee Meetings—Preparation and Public Availability of Information Given to Advisory Committee Members.'' This guidance will help sponsors develop, prepare, and submit advisory committee briefing materials and should help minimize the time and resources spent in preparing these materials for public availability. The guidance also describes the process FDA intends to follow when we make briefing materials available to the public. The term ''briefing materials'' is used to describe the package of information that we provide to advisory committee members before a meeting, and that usually contains information prepared by us and/or the sponsor (if the meeting involves an application or particular product). In addition, the Appendices to the draft guidance provide timelines for preparing and submitting briefing materials to FDA.

For open advisory committee meetings for which the briefing materials may contain information that under certain circumstances could be considered to be exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), we intend to post the publicly available version of the briefing materials on our Web site at least 2 full business days before the advisory committee meeting is scheduled to occur. With respect to meetings for which the briefing materials do not contain information that could be considered exempt from disclosure under FOIA, we will probably make the briefing materials available on our Web site more than 2 full business days before the advisory committee meeting is schedule to occur. In the latter case, we anticipate that meetings subject to this timeline will normally address general matters such as guidance documents and policy issues related to FDA-regulated products.

This draft guidance, which will harmonize the preparation and public availability of information given to advisory committee members for all products regulated by FDA, replaces three previously issued draft guidances: (1) ''Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000;'' (2) ''Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related to the Testing or Approval of Biologic Products and Convened by the Center for Biologics Evaluation and Research;'' and (3) ''Availability of Information Given to Advisory Committee Members in Connection With the Center for Devices and Radiological Health Open Public Panel Meetings.'' An important goal of this guidance is to help ensure that briefing materials are made available to the public as provided under section 10(b) of the Federal

Advisory Committee Act (5 U.S.C. app. 2). The guidance includes recommendations on how to identify information that is exempt from public disclosure under the FOIA.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if the approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/opacom/morechoices/industry/guidedc.htm*.

Dated: January 24, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–887 Filed 2–26–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities. Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Regulations and Forms (OMB No. 0915–0126)—Extension

The National Practitioner Data Bank (NPDB) was established through Title IV of Public Law (P.L.) 99–660, the Health Care Quality Improvement Act of 1986, as amended. Final regulations governing the NPDB are codified at 45 CFR part 60. Responsibility for NPDB implementation and operation resides in the Bureau of Health Professions, Health Resources and Services Administration, Department of Health and Human Services (HHS). The NPDB began operation on September 1, 1990.

The intent of Title IV of P.L. 99–660 is to improve the quality of health care by encouraging hospitals, State licensing boards, professional societies, and other entities providing health care services, to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure of the practitioner's previous damaging or incompetent performance.

The NPDB acts primarily as a flagging system; its principal purpose is to facilitate comprehensive review of practitioners' professional credentials and background. Information on medical malpractice payments, adverse licensure actions, adverse clinical privileging actions, adverse professional society actions, and Medicare/Medicaid exclusions is collected from, and disseminated to, eligible entities. It is intended that NPDB information should be considered with other relevant information in evaluating a practitioner's credentials.

The reporting forms and the request for information forms (query forms) are accessed, completed, and submitted to the NPDB electronically through the NPDB Web site at *http://www.npdb-hipdb.hrsa.gov*. All reporting and querying is performed through this secure Web site. Due to overlap in requirements for the Healthcare Integrity and Protection Data Bank (HIPDB), some of the NPDB's burden has been subsumed under the HIPDB.

Estimates of Annualized Burden are as Follows:

Regulation citation	Number of respondents	Frequency of responses	Hours per response (minutes)	Total burden hours
60.6(a) Errors & Omissions	303	5	15	385
60.6(b) Revisions to Actions	115	1.1	30	64
60.7(b) Medical Malpractice Payment Report	485	39	45	14,236
60.8(b) Adverse Action Reports—State Boards	0	0	0	0
60.9(a)3 Adverse Action Clinical Privileges & Professional Society	686	1.5	45	785
Requests for Hearings by Entities	1	1	480	8
60.10(a)(1) Queries by Hospital—Practitioner Applications	6,000	37.3	5	18,615
60.10(a)(2) Queries by Hospitals—Two Yr. Cycle	6,000	149	5	74,461
60.11(a)(1) Disclosure to Hospitals	0	0	0	0
60.11(a)(2) Disclosure to Practitioners (Self-Query)	0	0	0	0
60.11(a)(3) Disclosure to Licensure Boards	80	225	5	1,499
60.11(a)(4) Queries by Non-Hospital Health Care Entities	4,938	437	5	179,673
60.11(a)(5) Queries by Plaintiffs' Attorneys	5	5	30	3.0
60.11(a)(6) Queries by Non-Hospital Health Care Entities—Peer Review	0	0	0	0

Regulation citation	Number of respondents	Frequency of responses	Hours per response (minutes)	Total burden hours
60.11(a)(7) Requests by Researchers for Aggregated Data	100	1	30	50
60.14(b) Practitioner Places a Report in Disputed Status	666	1	5	55
60.14(b) Practitioner Statement	2,563	1	45	1,922
60.14(b) Practitioner Requests for Secretarial Review	117	1	480	936
60.3 Entity Registration—Initial	500	1	60	500
60.3 Entity Registration—Update	643	1	5	54
60.11(a) Authorized Agent Designation—Initial	500	1	15	125
60.11(a) Authorized Agent-Update	86	1	5	7
60.12(c) Account Discrepancy Report	300	1	15	75
60.12(c) Electronic Funds Transfer Authorization	363	1	15	91
60.3 Entity Reactivation	100	1	60	100
Total	.....	.....	.....	293,644

Numbers in the table may not add up exactly due to rounding.

Send comments to Susan Queen, PhD, HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: February 22, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–3446 Filed 2–27–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: March 7, 2007, 1 p.m.–5 p.m., EST. March 8, 2007, 9 a.m.–3:30 p.m., EST.

Place: Audio Conference Call and Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Wednesday, March 7, from 1 p.m. to 5 p.m., and on Thursday, March 8, from 9 a.m. to 3:30 p.m. The public can join the meeting in person at the address listed above or by audio conference call by dialing 1–888–947–9967 on March 7 and 8 and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: The agenda items for the March meeting will include, but are not limited to: A discussion of VICP outreach activities; an overview of the Vaccine Adverse Event Reporting System, including the requirements for the reporting of adverse events; a report from the ACCV Futures Workgroup; and updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice, National Vaccine Program Office, Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health), and Center for Biologics and Evaluation Research (Food and Drug Administration). Agenda items are subject to change as priorities dictate.

Public Comments: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation, to: Ms. Cheryl Lee, Principal Staff Liaison, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857 or e-mail: *clee@hrsa.gov*. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period. These persons will be allocated time as it permits.

For Further Information Contact: Anyone requiring information regarding the ACCV should contact Ms. Cheryl Lee, Principal Staff Liaison, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–2124 or e-mail: *clee@hrsa.gov*.

Notification: Due to inclement weather, the requirement that the public be notified of this meeting at least 15 calendar days in advance was not met.

Dated: February 22, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–3559 Filed 2–27–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Request for Genetic Studies in a Cohort of U.S. Radiologic Technologists

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 29, 2006, pages 78445–78446 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Genetic Studies in a Cohort of U.S. Radiologic Technologists (formerly known as ''Generic Clearance to Collect Medical Outcome and Risk Factor Data from a Cohort of U.S. Radiologic Technologists''). *Type of Information Collection Request:* Renewal with change of a previously approved collection (OMB No. 0925–0405, expiration 02/28/2007). *Need and Use of Information Collection:* The primary aim of this collection is to substantially increase knowledge about the possible modifying role of genetic variation on the long-term health effects associated with protracted low-to moderate-dose

radiation exposures. With this submission, the NIH, Office of Communications and Public Liaison, seeks to obtain OMB's approval to collect biospecimens and risk factor data in this ongoing cohort study of U.S. radiologic technologists to assess genetic and molecular risk factors for cancer, and to evaluate possible modifying effects of genetic variation on radiation-cancer relationships. Researchers at the National Cancer Institute and The University of Minnesota have followed a nationwide cohort of 146,000 radiologic technologists since 1982, of whom 110,000 completed at least one of three prior questionnaire surveys and 18,400 are deceased. This cohort is unique because estimates of cumulative radiation dose to specific organs (e.g. breast) are available and the cohort is largely female, offering a rare opportunity to study effects of low-dose radiation exposure on breast and thyroid cancers, the two most sensitive organ sites for radiation carcinogenesis in women. Overall study objectives are: (1) To quantify radiation dose-response for cancers of the breast, thyroid, and other radiogenic sites, and selected benign conditions related to cancer (e.g. thyroid nodules); (2) to assess cancer risk associated with genotypic, phenotypic, or other biologically measurable factors (e.g. serum levels of C-reactive protein, insulin growth factors or binding proteins); and (3) to determine if genetic variation modifies the radiation-related cancer risk. A third follow-up of this cohort was completed during the past three years. During 2003–2005, the ''Third Survey'' questionnaire was mailed or administered by telephone to 101,694 living cohort members who had completed at least one prior survey; 73,838 technologists (73% response) completed the survey. The questionnaire elicited information on: Medical outcomes to assess radiation-related risks; detailed employment data to refine the occupational radiation dose estimates; and behavioral and residential histories for estimating lifetime ultraviolet (UV) radiation exposure. Analyses of these data are currently underway and findings will address an important gap in the scientific understanding of radiation dose-rate effects, i.e., whether cumulative exposures of the same magnitude have the same health effects when received in a single or a few doses over a very short period of time (as in the atomic bomb or therapeutic exposures) or in many small doses over a protracted period of time (as in medical or nuclear occupational settings).

There are few, if any, other study populations in which both quantified breast radiation doses and blood samples are available for individuals with protracted low-dose radiation exposures. The current petition is for renewal with change of the previous clearance to administer a Genetic Studies Questionnaire and collect biospecimens from 10,000 cohort members who completed at least one prior survey. These individuals would serve as a comparison group for case-cohort studies of gene main effects and gene-radiation interactions. To improve statistical power to detect such associations, we plan to select the comparison sample based on dose; this is to ensure inclusion of sufficient numbers of high-dose individuals. The Genetic Studies Questionnaire will collect information on: Family history of cancer; reproductive history in women (e.g. pregnancy outcomes, menopause); personal medical radiation exposures (e.g. diagnostic x-rays, therapeutic irradiation); and personal history of chemotherapy. The survey will be in optical-read format for computerized data capture. A blood collection kit will be mailed to technologists along with the Genetic Studies Questionnaire; they will be asked to take the kit to a phlebotomist to have a single tube of blood drawn and returned to the study laboratory by pre-paid Federal Express overnight delivery. Ongoing efforts to medically validate self-reported cancers and other medical outcomes will continue. The annual reporting burden is as follows: *Frequency of Response:* On occasion. *Affected Public:* U.S. radiologic technologists who willingly participated in earlier investigations to quantify the carcinogenic risks of protracted low-to moderate-dose occupational radiation exposures. *Estimated Number of Respondents:* 4,233. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours per Response:* 1.3. Annual Burden Hours Requested: 5,630. Total cost to respondents is estimated at $157,471. There are no capital costs, operating costs and/or maintenance costs to report.

RESPONDENT AND BURDEN ESTIMATE—OMB NO. 0925–0405

Type of respondent	Number of respondents (3 yr)	Frequency of response	Total respondents (3 yr)	Average hours per response	Total hours (3 yr)	Annual hour burden
Genetic Studies/Risk Factor Survey and Blood Collection						
Sub-Cohort	10,000	1	10,000	1.66666	16,666	5,555
Medical Validation						
Hospitals/ Physicians	2,700	1	2,700	0.08333	225	75
Total:	12,700	.....	12,700	.....	16,891	5,630

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functioning of the National Cancer Institute, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response

time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Michele M. Doody, Radiation Epidemiology Branch, National Cancer Institute, Executive Plaza South, Room 7040, Bethesda, MD 20892–7238, or call non-toll-free at 301–594–7203 or e-mail your request, including your address to: *doodym@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: February 16, 2007.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E7–3435 Filed 2–27–07; 8:45 am]

BILLING CODE 4104–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods of Determining the Prognosis of Hepatocellular Carcinoma

Description of Technology: Hepatocellular carcinoma (HCC) represents an extremely poor prognostic cancer that remains one of the most common and aggressive malignancies worldwide. A major hallmark of HCC is intrahepatic metastasis and post-surgical reoccurrence. With current diagnostic methods, HCC patients are often diagnosed with end-stage cancer and have poor survival. Thus, there is a need for an accurate method to identify HCC and its proclivity for metastases/relapse, particularly at early stages of this disease.

The inventors have discovered a unique set of microRNA (miRNA) biomarkers that are associated with HCC metastasis/recurrence. This miRNA signature was validated in an independent cohort of 110 HCC samples as an independent predictor of HCC prognosis and likelihood of metastasis and relapse. In particular, the inventors provide evidence that these miRNA markers can predict HCC metastasis in the early stages of cancer. This methodology may enable clinicians to effectively stratify patients for appropriate cancer treatment and prioritize liver transplantation candidates.

Applications: (1) Method to prognose HCC, patient survival and likelihood of HCC metastasis/relapse; (2) Diagnostic tool to aid clinicians in determining appropriate cancer treatment; (3) Compositions that inhibit miRNA HCC biomarkers such as siRNA; (4) Method to treatment HCC patients with inhibitory miRNA compositions.

Market: (1) Primary liver cancer accounts for about 2% of cancers in the U.S., but up to half of all cancers in some undeveloped countries; (2) Post-operative five year survival rate of HCC patients is 30–40%.

Development Status: This technology is currently in the pre-clinical stage of development.

Inventors: Xin Wei Wang et al. (NCI).

Publication: Budhu *et al.* A Unique Metastasis-related MicroRNA Expression Signature Predicts Survival and Recurrence in Hepatocellular Carcinoma, manuscript in preparation.

Patent Status: U.S. Provisional Application No. 60/884,052 filed 09 Jan 2007 (HHS Reference No. E–050–2007/0–US–01).

Licensing Availability: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov.*

A Varicella-Zoster Virus Mutant that is Markedly Impaired for Latent Infection Available for the Development of Shingles Vaccines and Diagnostics

Description of Technology: Reactivation of latent Varicella-Zoster virus (VZV) infection is the cause of shingles, which is prominent in adults over the age of 60 and individuals who have compromised immune systems, due to HIV infection, cancer treatment and/or transplant. Shingles is a worldwide health concern that affects approximately 600,000 Americans each year. The incidence of shingles is also high in Europe, South America, and India; the latter having an estimated two million individuals affected, yearly. Recent research studies show that VZV vaccines have a significant effect on decreasing the incidence of shingles in elderly.

The current technology describes compositions, cells and methods related to the production and use of a mutant VZV and the development of vaccines against the infectious agent. Latent VZV expresses a limited repertoire of viral genes including the following six open reading frames (ORFs): 4, 21, 29, 62, 63, and 66. The present invention describes an ORF29 mutant VZV that demonstrates a weakened ability to establish latency in animal studies. The current technology provides methods for using the mutant in the development of live vaccines and diagnostic tools. A related invention is described in PCT/US05/021788 (publication number WO2006012092).

Applications: Development of vaccines and diagnostics for prevention of shingles.

Development Status: Pre-clinical studies have been performed to demonstrate the reduced latency of the ORF29 mutant VZV in animals.

Inventors: Jeffrey Cohen (NIAID) and Lesley Pesnicak (NIAID).

Patent Status: U.S. Provisional Application No. 60/857,766 filed 09 Nov 2006 (HHS Reference No. E–029–2007/0–US–01).

Licensing Availability: Available for licensing and commercial development.

Licensing Contact: Chekesha Clingman, Ph.D.; 301/435–5018; *clingmac@mail.nih.gov.*

Collaborative Research Opportunity: The NIAID Laboratory of Clinical Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize vaccine strains of VZV vaccine with impaired latency. Please contact Kelly Murphy, J.D., M.S., at 301/451–3523 or *murphykt@niaid.nih.gov* for more information.

Highly Soluble Pyrimido-Dione-Quinoline Compounds: Small Molecules That Stabilize and Activate p53 in Transformed Cells

Description of Technology: The tumor-suppressor p53 protein plays a major role in tumor development. Most human cancers ail to normally activate p53, which is at least partly responsible for the unregulated growth of cancer cells and their failure to undergo apoptosis. While many chemotherapeutics enhance p53 levels, their non-specific DNA damage (genotoxicity) causes unfavorable side effects.

This invention reports the composition and function of a pyrimido-dione-quinoline that was found to inhibit HDM2's ubiquitin ligase (E3) activity without the accompanying genotoxicity of current therapeutic drugs. Like the HLI98 family of compounds reported previously (see reference below), the subject of the current invention stabilizes p53 in cells, inhibiting its ubiquitin-mediated proteasomal degradation. Unlike the HLI98 compound, the pyrimido-dione-quinoline reported here induces a robust p53 response, and is highly water-soluble. Thus, these pyrimido-dione-quinoline compounds have the potential to stabilize p53 and activate a p53 response in tumors.

Applications and Modality: Water-soluble with improved potency in stabilizing p53 and activating a p53 response; Inhibits unregulated growth of cancer cells; Reduced genotoxicity compared to many chemotherapeutics.

Market: Small molecule-based cancer therapeutics for tumors expressing wild type p53, which comprises approximately 50% of cancers.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Allan M. Weissman and Yili Yang (NCI).

Related Publication: Y Yang et al. Small molecule inhibitors of HDM2 ubiquitin ligase activity stabilize and activate p53 in cells. Cancer Cell 2005 Jun;7(6):547–559.

Patent Status: U.S. Provisional Application No. 60/813,946 filed 14 Jun 2006 (HHS Reference No. E–138–2006/0–US–01).

Availability: Available for exclusive and non-exclusive licensing.

Licensing Contact: Thomas P. Clouse, J.D.; 301/435–4076; clousetp@*mail.nih.gov.*

Collaborative Research Opportunity: The Laboratory of Protein Dynamics and Signaling (LPDS) at the National Cancer Institute, NIH, is seeking a collaborative partner under a Cooperative Research and Development Agreement (CRADA) to develop therapeutics approaches utilizing inhibitors of the ubiquitin system such as described in this invention. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Human Cancer Therapy Using Engineered Anthrax Lethal Toxin

Description of Technology: Anthrax lethal toxin (LeTx) consists of two components: The protective antigen (PrAg) and the lethal factor (LF). PrAg binds to the cell surface where it is activated by furin protease, followed by the formation of a PrAg heptamer. LF is then translocated into the cytosol of a cell via this heptamer, where it acts as a metalloprotease on all but one mitogen-activated protein kinase kinase (MAPKK). Approximately 70% of human melanomas contain a mutation (B–RAF V600E) that constitutively activates a MAPKK pathway, and LeTx has been shown to have significant toxicity towards cells which have this mutation. This suggested a potential use for LeTx in cancer therapy. Unfortunately, native LeTx is toxic to normal cells, detracting from its *in vivo* applicability.

PrAg has been engineered to be activated by a matrix metalloprotease (MMP), instead of by furin protease. Because MMPs are highly expressed in tumor cells, this modification increases selectivity towards cancer cells. Surprisingly, mouse data shows that the modified LeTx (denoted PrAg–L1/LF) is less cytotoxic to ''normal'' cells in vivo, when compared to wild-type LeTx. Significantly, PrAg–L1/LF maintained its high toxicity toward human tumors in mouse xenograft models of human tumors, including melanomas. However, this toxicity applied not only to tumors having mutations that constitutively activate MAPKKs, but also to other tumor types such as lung and colon carcinomas. The absence of toxicity to ''normal'' cells coupled to its effectiveness on a wide range of cancer cell types suggests that PrAg–L1/LF may represent a novel cancer therapeutic.

Applications: PrAg–L1/LF has applications as a human cancer therapeutic; Applicability extends beyond melanomas, including lung and colon carcinomas.

Market: The worldwide market for melanoma therapeutics is approximately $437M, and is predicted to reach $680M by the year 2009. Approximately 2.4 million people are afflicted with melanoma, with around 150,000 new cases each year. Demonstration of effectiveness *in vivo* for lung and colon carcinomas will increase the market for this technology.

Development Status: The technology is at the preclinical stage.

Inventors: Stephen H. Leppla (NIAID), Shi-hui Liu (NIAID), Thomas H. Bugge (NIDCR), John R. Basile (NIDCR), Brooke Currie (NIDCR).

Related Publications:

1. S Liu *et al.* Intermolecular complementation achieves high-specificity tumor targeting by anthrax toxin. Nat Biotechnol. 2005 Jun;23(6):725–730.

2. RJ Abi-Habib *et al.* A urokinase-activated recombinant anthrax toxin is selectively cytotoxic to many human tumor cell types. Mol Cancer Ther. 2006 Oct;5(10):2556–2562.

Patent Status: U.S. Provisional Application No. 60/870,050 filed 14 Dec 2006 (HHS Reference E–070–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: David A. Lambertson, Ph.D.; 301/435–4632; *lambertsond@od.nih.gov.*

Collaborative Research Opportunity: The NIAID Laboratory of Bacterial Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize PrAg–L1/LF as a novel cancer therapeutic. Please contact Stephen H. Leppla, Ph.D. at 301/594–2865 and/or *sleppla@niaid.nih.gov* for more information.

This abstract was originally published in the **Federal Register** on Wednesday, February 7, 2007, 72 FR 5726, with an incorrect title of ''Extended Transgene Expression for a Non-Integrating Adenoviral Vector Containing Retroviral Elements.''

Dated: February 20, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–3436 Filed 2–27–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning

opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Underage Drinking Prevention: Town Hall Meeting Feedback Form—New

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Substance Abuse Prevention (CSAP) is proposing the project the 2008 Underage Drinking Prevention: Town Hall Meetings (THM) Initiative. In 2006, approximately 1,510 THMs were held in 1,262 community-based organizations (CBO) throughout the Nation. Each of the THMs strived to increase the understanding and awareness of underage alcohol use and its consequences by encouraging individuals, families, and communities to address the problem. The local THMs gave communities the opportunity to come together to learn more about the new research on underage alcohol use and its impact on both the individuals and the community. They also discussed how their communities can best prevent underage alcohol use.

To help guide decision making and planning for future THMs, SAMHSA/CSAP plans to conduct a process assessment of the THMs to be held in 2008. CBOs who agree to participate in this initiative will be asked to provide feedback about the implementation and results of the THMs in their community. This information collection is being implemented under the authority of Section 501(d) (4) of the Public Health Service Act (42 U.S.C. 290aa).

The contractor conducting this information collection will distribute a brief feedback form to all participating organizations. The form includes 14 items about the THM, including where, when, and who conducted the meeting, number of attendees, format of meeting, participants in the presentations, actions planned, media coverage of the meeting, composition of the audience, responses of the attendees, materials provided in the town hall meetings, and indications of increased awareness and increased involvement. In addition to distributing the feedback form, the contractor will be responsible for collecting, compiling, analyzing, and reporting on information requested through this feedback form.

The feedback form will be completed by an estimated 1,200 employees from CBOs. The paper form will take an average of 10 minutes (.167 hours) to review instructions, complete the form, and mail it in a self-addressed, stamped envelope. This burden estimate is based on comments from several potential respondents who reviewed the form and provided comments on how long it would take them to complete it.

Form name	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Feedback Form	1,200	1	.167	120

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 22, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–3468 Filed 2–27–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Issuance of Final Determination Concerning Digital Color Multifunctional Systems

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that the Bureau of Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain digital color multifunctional systems to be offered to the United States Government under an undesignated government procurement contract. Based on the facts presented, the final determination found that Japan is the country of origin of the subject digital color multifunctional systems for purposes of U.S. government procurement.

DATES: The final determination was issued on February 8, 2007. A copy of the final determination is attached. Any party-at-interest as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of February 28, 2007.

FOR FURTHER INFORMATION CONTACT: Daniel Cornette, Valuation and Special Programs Branch, Office of International Trade; telephone (202) 572–8731.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on February 8, 2007, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain digital color multifunctional systems to be offered to the United States Government under an undesignated government procurement contract. The CBP ruling number is HQ 563491. This final determination was issued at the request of Sharp Electronics Corporation under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18).

The final determination concluded that, based upon the facts presented, the assembly in Japan of Japanese and foreign components to create the subject digital color multifunctional systems substantially transformed the foreign components into a product of Japan.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is

issued. Section 177.30, CBP Regulations (19 CFR 177.30), states that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: February 21, 2007.

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings, Office of International Trade.

HQ 563491

February 8, 2007.

MAR–2–05 RR:CTF:VS 563491 DCC

Category: Marking.

Ms. Fusae Nara, Pillsbury Winthrop Shaw Pittman, 1540 Broadway, New York, NY 10036–4039.

Reference: U.S. Government Procurement; Final Determination; country of origin of digital color multifunctional systems; substantial transformation; 19 CFR Part 177.

Dear Ms. Nara: This is in response to your letter dated April 24, 2006, requesting a final determination on behalf of Sharp Electronics Corporation (''Sharp'') pursuant to subpart B of Part 177, Customs and Border Protection (''CBP'') Regulations (19 CFR 177.21 *et seq.*). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (codified at 19 U.S.C. 2411 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain digital color multifunctional systems that Sharp may sell to the U.S. Government. We note that Sharp is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

Facts:

The products subject to this ruling are digital color multifunctional systems manufactured by Sharp, Model Nos. MX–2300NJ and MX–2700NJ (hereinafter the ''J–Models''), imported from Japan for the purpose of sales to U.S. government agencies. The J-Models have photocopying, printing, faxing, and scanning functions. The primary difference between the two models is the speed at which they are able to process images. The MX–2300NJ prints 23 pages per minute compared to 27 pages per minute for the MX–2700NJ.

Sharp's parent company (''Sharp Japan'') developed the J-Model in Japan, and performs the entire engineering, development, design, and art work processes for both models in Japan. According to your submission, the production process may be broken down into four stages. In the first stage, the following key subassemblies are assembled: laser scanner unit (''LSU'') (assembled in China); first transfer unit subassembly (assembly begins in China and is finished in Japan); process unit subassembly (assembled in China); and controller unit subassembly (assembled in Japan). In addition, four minor subassemblies are assembled in China: first transfer cleaner unit; cabinet subassembly; auto document feeder subassembly, and fuser unit. The finished systems have one unit each of five different kinds of application-specific integrated circuits (''ASIC''), all of which are made in Japan.

The second stage is the final physical assembly of the J-Models. In the third stage, Sharp Japan makes adjustments and conducts testing of the J-Models. In the fourth stage, the J-Models undergo final inspection and packaging for shipment to the United States.

1. Subassembly Preparation

(a) Laser Scanner Unit Subassembly

The LSU writes the image data of the documents or graphics onto the drum unit. While the components comprising the LSU are assembled in China, the charge coupled device (''CCD'') and the ASIC, which are mounted on the cabinet as well as the laser diodes (''LDs''), are made in Japan. Color images are created by exposing the laser lights of the LDs to four color-specific drums (black, cyan, magenta, and yellow). The ASIC is designed to control the exposure of the laser lights following the scanned data with speed and precision.

(b) First Transfer Unit Subassembly

The first transfer unit is where the four color images, which are created by the four color drums, are transformed into an integrated color image that is then transferred onto paper. The image is transferred to the paper by a wide belt known as a transfer belt. The transfer belt rotates around the first transfer unit generating print images, while a cleaner cartridge continuously cleans the surface of the belt. The unfinished first transfer unit is manufactured in China and completed in Japan where the transfer belt is manufactured and installed.

(c) Process Unit Subassembly

The process unit is a combination of the drum, developer, and toner cartridges. Because the J-Models are color multifunctional systems, they require four sets of the process units, which includes a drum, developer and toner for each of the four colors, *i.e.*, black, yellow, cyan, and magenta. The developer and toner materials, as well as the drums, are produced in Japan. The process unit subassembly is assembled by attaching each of the four drums to the four drum cartridges. The toner and developer cartridges are filled with toner and developer and installed on the subassembly for testing purposes.

(d) Control Box Unit Subassembly

The control box unit is the ''brain'' of the J-Model machines. The control printed wiring board (''PWB'') and the mother PWB are populated in China with diodes, resisters, and condensers. In Japan, Sharp forms a harness for the hard disk (either from Malaysia or China) that is then fastened to the harness board of the control box unit with screws. The hard disk is affixed to the harness and then to the PWB. Cushioning is installed around the hard disk and flash memory chips (*i.e.*, the boot flash ROM, and the program flash ROM) are inserted into designated slots on the control box.

2. Final Assembly

The final Japanese assembly process begins with the cabinet that houses the middle section of the finished product. The cabinet is fabricated in China and contains certain components, such as Japanese ASICs, that are installed in China. The major subassemblies described above are assembled into the cabinet as follows:

a. The side panel of the cabinet is opened and the LSU subassembly is inserted and fastened to the cabinet with screws.

b. The front panel of the cabinet is opened and the first transfer unit assembly is inserted into a slot and fastened to the cabinet with screws.

c. Four drum cartridges, four developer cartridges, and four toner cartridges—one for each of the four colors (*i.e.*, black, yellow, cyan, and magenta)—are installed.

d. A small panel on the back of the cabinet is removed and the control box unit is inserted into a slot in the cabinet assembly and secured with screws.

e. The automatic document feeder is fastened to the hinge on top of the cabinet assembly with screws.

3. Testing

In Japan, extensive tests are conducted and adjustments are made to all functions, including scanning, image placement, color and darkness.

a. Adjustments. The following adjustments are made to each unit:

- Confirm data input circuitry by connecting the printer/scanner unit to a computer based on the destination of the finished unit.
- Inspect the card reader by running a test card with a simulation program.
- Apply high voltage to the printer unit and adjust it to be within the permitted range for each color.
- Measure the bias voltage to confirm that the voltage used to remove excess toner is proper.
- Confirm the rotation of the toner motor.
- Confirm the functioning of the hard disk and the hard disk output on the LCD display panel of the operation unit.
- Measure the distance between the drum ''sleep'' position and the toner cartridge magnet roller to ensure even print quality.
- Adjust the amount of developer by connecting the developer unit for each color.
- Attach the toner cartridge and adjust the darkness sensor.

b. Test Copying. After the assembly adjustments are complete, the unit undergoes alignments by running test copies to confirm the following functions: Paper placement; print darkness; optical images; print placement; color balance for printer engine and print output; color pattern chart; manual copy; print and image output; two-sided copying; feeder functions; intermediate tone process control for various printing modes (*i.e.*, letter, photograph, and combination); print output from an attached computer; USB cable connection; and memory. After testing is complete, each unit is reset to the default position to prepare for final inspection and packaging for shipment.

4. Final Inspection and Packaging

The finished assembly is prepared for shipment by removing the drum cartridges, toner cartridges, and developer cartridges used for testing purposes and by cleaning the color toner pipes, printing mechanism, scanner surface, and exterior. New drum and developer cartridges are inserted and secured to the unit. An operator conducts a final inspection that includes testing the power supply, the LCD display panel, sensors, and proper operation of the unit. After final inspection, the finished unit is packaged for shipping.

Issue:

Whether the multifunctional systems manufactured by Sharp (Model Nos. MX–2300NJ and MX–2700NJ) are products of Japan for purposes of U.S. Government procurement.

Law and Analysis:

Pursuant to Subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 CFR 177.22(a). A substantial transformation ''results in an article having a name, character, or use differing from that of the imported article.'' *Uniroyal, Inc.* v. *United States*, 542 F. Supp. 1026, 1029 (Ct. Int'l Trade 1982), aff'd, 702 F.2d 1022 (Fed. Cir. 1983).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. See *Belcrest Linens* v. *United States*, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. In C.S.D. 85–25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalized System of Preferences (''GSP''), the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled.

CBP has held in a number of cases involving similar merchandise that complex and meaningful assembly operations involving a large number of components will generally result in a substantial transformation. In Headquarters Ruling Letter (''HRL'') 562936, 69 FR 13577 (March 23, 2004), we addressed the country of origin of certain multifunction printers assembled in Japan of various Japanese- and Chinese-origin parts. In that ruling, we determined that the multifunction printer was a product of Japan based on the fact that a ''substantial portion of the printer's individual components and subassemblies [were] of Japanese origin.'' Furthermore, we noted that some of the Japanese components and subassemblies were essential parts of the finished article, and other Japanese parts, including the reader scanner unit and the control panel unit, were critical to the production of the printer. Finally, HRL 562936 noted that the Japanese processing operations were complex and meaningful, that required ''the assembly of a large number of components, and render[ed] a new and distinct article of commerce that possesse[d] a new name, character, and use.''

In HRL 562495, dated November 13, 2002, color ink jet printers were assembled in Singapore of components imported from a number of other countries. In that ruling, we determined that the imported components were substantially transformed during assembly such that the country of origin of the assembled ink jet printers was Singapore. In support of this determination, we considered the processing occurring within Singapore to be complex and extensive, requiring the integration of 13 major subassemblies to the chassis, and that the resulting product was a new and distinct article of commerce that possessed a new name, character, and use.

In HRL 561734, dated March 22, 2001, published in the **Federal Register** on March 29, 2001 (66 FR 17222), we held that certain multifunctional machines (consisting of printer, copier, and fax machines) assembled in Japan were a product of that country for purposes of U.S. Government procurement. The multifunctional machines were assembled from 227 parts (108 parts obtained from Japan, 92 from Thailand, 3 from China, and 24 from other countries) and eight subassemblies, each of which was assembled in Japan. One of the subassemblies produced in Japan, referred to as the scanner unit, was

described as the ''heart of the machine.'' In finding that the imported parts were substantially transformed in Japan, we stated that the individual parts and components lost their separate identities when they became part of the multifunctional machine. See also HRL 561568, dated March 22, 2001, published in the **Federal Register** on March 29, 2001 (66 FR 17222).

By contrast, assembly operations that are minimal or simple will generally not result in a substantial transformation. For example, in HRL 734050, dated June 17, 1991, we determined that Japanese-origin components were not substantially transformed in China when assembled in that country to form finished printers. The printers consisted of five main components identified as the ''head,'' ''mechanism,'' ''circuit,'' ''power source,'' and ''outer case.'' The circuit, power source and outer case units were entirely assembled or molded in Japan. The head and mechanical units were made in Japan but exported to China in an unassembled state. All five units were exported to China where the head and mechanical units were assembled with screws and screwdrivers. Thereafter, the head, mechanism, circuit, and power source units were mounted onto the outer case with screws. In holding that the country of origin for marking purposes was Japan, CBP recognized that the vast majority of the printer's parts were of Japanese origin and that the operations performed in China were relatively simple assembly operations.

In order to determine whether a substantial transformation occurs when components of various origins are assembled to form multifunctional machines, CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The primary considerations in such cases are the country of origin of the machine's components and subassemblies, extent of processing that occurs within a given country, and whether such processing renders a product with a new name, character, and use. In addition, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skills required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no single factor is determinative.

Based on the facts and law of this case, we find that the assembled J-Model multifunctional systems are products of Japan for purposes of U.S. Government procurement. Although several of the subassemblies are assembled in China, we find that enough of the Japanese subassemblies and individual components serve major functions and are high in value, in particular, the transfer belt, control box unit, application-specific integrated circuits, charged couple device, and laser diodes. The process unit subassembly is also crucial in the performance of the multifunctional systems. While it is assembled in China, its key components, the developer and toner materials, and drums are produced in Japan.

Furthermore, it is significant that although the PWB is of Chinese origin, the firmware for the control box unit subassembly is developed in Japan. This firmware programming controls the print engine, readout mechanism, processes images for the copier, printer, fax, and scanner, and controls the operation panel display. We further note that the testing and adjustments performed in Japan are technical and complex. Finally, the assembly operations that occur in Japan are sufficiently complex and meaningful. Through the product assembly and testing and adjustment operations, the individual components and subassemblies of Japanese and foreign-origin are subsumed into a new and distinct article of commerce that has a new name, character, and use. Therefore, we find that the country of origin of the J-Models digital color multifunctional systems for purposes of U.S. Government procurement is Japan.

Holding:

Based on the facts of this case, we find that the processing in Japan substantially transforms the non-Japanese components. Therefore, the country of origin of the Sharp digital color multifunctional systems (Model Nos. MX–2300NJ and MX–2700NJ) is Japan for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register** as required by 19 CFR 177.29. Any party-at-interest other than the party that requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Any party-at-interest may, within 30 days after publication of the **Federal Register** notice reference above, seek judicial review of this final determination before the U.S. Court of International Trade.

Sincerely,

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings, Office of International Trade.

[FR Doc. E7–3482 Filed 2–27–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2394–06; DHS Docket No. USCIS–2006–0051]

RIN 1615–ZA40

Special FOIA Processing Track for Individuals Appearing Before an Immigration Judge

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS) is improving its processing of Freedom of Information Act (FOIA) requests from the general public by establishing a third processing track for individuals appearing before an immigration court. Currently, a large portion of FOIA requests are submitted by individuals who have received a Notice To Appear for a hearing before an immigration judge or by such individuals' attorneys or representatives. By creating an additional processing track, USCIS will be able to provide the public with more expeditious service and to thereby improve customer satisfaction.

DATES: This notice is effective March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Brian J. Welsh, Chief, Freedom of Information Act and Privacy Act, U.S. Citizenship and Immigration Services, Department of Homeland Security, P.O. Box 648010, Lee's Summit, Missouri 64064, *Phone:* 816–350–5785, *E-Mail: uscis.foia@dhs.gov* .

SUPPLEMENTARY INFORMATION:

Background:

Under the Freedom of Information Act, 5 U.S.C. 552 (''FOIA''), the Privacy Act, 5 U.S.C. 552a, and the Department of Homeland Security's implementing regulations located at 6 CFR 5.5(b), the Secretary of Homeland Security may use two or more processing tracks for responding to FOIA requests. *Currently, USCIS has two tracks:* Track 1 is for less complex requests that can be processed in 20 working days or less. Track 2 is for complex requests that may require more than 20 working days to process and that include searching and line-by-line review of numerous pages of information. With this notice, USCIS will establish a third processing track, the ''Notice To Appear'' track, which will allow for accelerated access to the Alien-File (A–File) for those individuals who have been served with a charging

document and have been scheduled for a hearing before an immigration judge as a result. The creation of this track is consistent with Executive Order 13392, ''Improving Agency Disclosure of Information'' (December 14, 2005), which requires Federal agencies to improve their FOIA processing.

''Notice To Appear'' track cases do not include cases in which the immigration judge has issued a final order or cases in which an appeal of an immigration judge's decision has been filed with the Board of Immigration Appeals (BIA). ''Notice To Appear'' track cases do not include cases in which the subject's date of scheduled hearing before the immigration judge has passed and current records indicate that the subject failed to appear for his/her scheduled hearing, resulting in closure of the removal/deportation proceedings by the immigration judge.

An Alien-File or A-File is the series of records USCIS maintains on immigrants, certain non-immigrants, applicants for citizenship, certain individuals who have relinquished their United States citizenship, applicants for permanent residence or other immigration benefits, and individuals who have become subjects of immigration enforcement proceedings. The A-File documents the history of such people's interaction with USCIS or other components of the Department of Homeland Security (DHS) in actions prescribed by the Immigration and Nationality Act (INA) and related regulations. USCIS uses the information in an A-File to adjudicate requests for immigration-related benefits and to enforce U.S. immigration laws.

Individuals may request access to their A-files by filing a FOIA request with Form G–639, Freedom of Information/Privacy Act Request, or by having their attorney or representative submit such a request along with a Form G–28, Notice of Entry of Appearance as Attorney or Representative, on their behalf. These forms can be found at *http://www.uscis.gov.*

A requester (including individuals, attorneys, or representatives) seeking to be placed in the queue must provide a copy of one of the following documents:

1. Form I–862, Notice To Appear, documenting the scheduled date of the subject's hearing before the immigration judge;

2. Form I–122, Order To Show Cause, documenting the scheduled date of the subject's hearing before the immigration judge;

3. A written notice of continuation of a scheduled hearing before the immigration judge; or

4. Form I–863, Notice of Referral to Immigration Judge.

After USCIS receives the request and validates it as a proper request, USCIS will place it in a queue of previously received requests of a similar nature. USCIS will take the requests in the order of receipt, as mandated by the FOIA and the applicable implementing DHS regulations at 6 CFR 5. USCIS will only accept requests for expedited processing for this queue if the requester has satisfied the requirements outlined in 6 CFR 5.5(d).

All other FOIA requirements, as described in 6 CFR part 5, Disclosure of Records and Information, will apply.

This notice does not affect those requests that do not fall in the above-described category.

Dated: February 21, 2007.

Emilio T. Gonzalez,

Director, U.S. Citizenship and Immigration Services.

[FR Doc. E7–3357 Filed 2–27–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan and Environmental Impact Statement for Vieques National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service announces that a Draft Comprehensive Conservation Plan and Environmental Impact Statement (Draft CCP/EIS) for the Vieques National Wildlife Refuge is available for review and comment. This Draft CCP/EIS was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969. The Draft CCP/EIS describes how the Service intends to manage the refuge over the next 15 years.

DATES: Written comments must be received at the postal address listed below no later than April 30, 2007.

ADDRESSES: To provide written comments or to obtain a copy of the Draft CCP/EIS, please write to: Oscar Diaz, Refuge Manager, Vieques National Wildlife Refuge, P.O. Box 1527, Vieques, Puerto Rico 00765. A copy of the Draft CCP/EIS is also available on compact diskette. It can be accessed and downloaded at the following Internet address: *http://www.fws.gov/southeast/planning/*. A public meeting will be held at the Multiple Use Center (Centro de Usos Multiples) in Isabel Segunda, Vieques, Puerto Rico, to present the plan to the public. Special mailings, news media outlets, and posters will be avenues to inform the public of the date and time of the meeting.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) requires the Service to develop a comprehensive conservation plan for each refuge. The purpose in developing a plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Vieques National Wildlife Refuge was created from former Navy managed lands by congressional actions in 2001 and 2003. It consists of approximately 17,771 acres—3,100 acres on western Vieques and 14,671 acres on eastern Vieques. The transferred lands are to be managed in accordance with the Refuge Administration Act (as amended).

The refuge lands were historically used for agricultural purposes and more recently for military training activities. As a result, the wildlife habitats and communities are significantly altered and non-native invasive species are common along with remnants of native habitats. As a result of the military training, portions of the refuge contain unexploded ordnance and other contaminants. These areas have been classified as a ''superfund site'' under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Cleanup of these portions of the refuge is being conducted by the Navy in accordance with CERCLA. In addition, a Federal Facilities Agreement between the Navy, Environmental Protection Agency, Fish and Wildlife Service, and Commonwealth of Puerto Rico will help to guide the cleanup process.

Although the short-term use and management of areas contaminated with

unexploded ordnance would be restricted, the alternatives presented in this Draft Plan were developed with the assumption that these lands would be cleaned of any contaminants that would pose a threat to either wildlife or humans.

Before the Service began the development of the Draft Plan, it hosted a series of public scoping meetings to solicit public opinion and identify issues that should be addressed. To address the existing habitat conditions, the ongoing cleanup activities, the issues identified by the public, and the mission and purpose of the refuge, the planning team developed a series of goals for the plan. The goals are: (1) Conserve, enhance, and restore native plant communities and wetland habitats and their associated fish, wildlife, and plants, representative of the native biological diversity that would have been found on Vieques Refuge lands prior to major agricultural and military use of the lands; (2) monitor, protect, and recover special status animals, plants, and species of management interest; (3) provide opportunities for wildlife-dependent recreation and education to enhance public appreciation, understanding, and enjoyment of refuge wildlife, habitats, and cultural history; (4) ensure, through the cooperative efforts of partners, that the refuge is cleaned of all classes of contaminants that could pose a threat to the health and safety of the wildlife, residents, staff, and visitors; (5) provide the resources needed to implement the selected management alternative and ensure the other goals and objectives identified in the plan can be achieved; and (6) develop effective and open communication with the community to raise public awareness of refuge programs, management decisions, the missions of the Fish and Wildlife Service and the National Wildlife Refuge System by working closely with Vieques citizens and interested groups and organizations.

Based on these goals and information obtained during the scoping process, the plan offers three alternatives to help address the issues identified and achieve the vision of the Vieques National Wildlife Refuge.

Alternative A (Current Management or No Action)

The current management alternative provides for a continuation of the existing level of management. Staffing would remain at the current levels and ongoing programs and activities would continue with only minor changes and no new programs.

Alternative B (Resource Emphasis)

This alternative focuses on wildlife and habitat management but maintains the existing visitor programs and public uses. Habitat management and monitoring would be expanded and agreements with research, governmental, and non-governmental organizations would be developed to provide information needed for the management of forests, grasslands, coastal wetlands, beaches, and listed species and their habitats. In partnership with others, programs would be developed for management of nesting sea turtle populations on Vieques Refuge beaches.

Alternative C (Habitat Management and Public Use Emphasis) (Proposed Alternative)

This alternative directs the refuge toward a realistic and achievable level of both habitat management and public use and provides a management program that addresses the needs of the resources and, where appropriate and compatible with the refuge purposes, the needs of the community. This alternative provides for an increase in management efforts to restore the refuge habitats without diminishing the wildlife values associated with the current conditions. There is also a focus on management activities to benefit threatened and endangered species. This includes the possible reintroduction of species extirpated from Vieques and expansion of populations of species already found on the refuge. Priority public uses, as identified in the National Wildlife Refuge System Improvement Act of 1997, would be expanded and other uses that are determined to be compatible with the refuge mission may be permitted. Historic and archaeological resources would be stabilized and, where possible, interpretation of their significance and role in the evolution of Vieques Refuge would be provided.

After the review and comment period for the Draft Plan and Environmental Impact Statement, all comments will be analyzed and considered by the Service. All comments become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and other Service and Departmental policies and procedures.

FOR FURTHER INFORMATION CONTACT: Gisella Burgos; Telephone: 787/741–2138.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: November 21, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E7–3478 Filed 2–27–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

National Wildlife Refuges, North Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service, we) intend to gather information necessary to prepare a comprehensive conservation plan (CCP) and associated environmental documents for twelve (12) National Wildlife Refuges (NWRs) located in the State of North Dakota. The twelve (12) NWRs are Stump Lake, Lake Alice, Kellys Slough, Audubon, Chase Lake, Lake Nettie, McLean, Lake Zahl, Shell Lake, White Lake, Lake Ilo, and Stewart Lake. We furnish this notice in compliance with our CCP policy to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: To ensure consideration, we must receive your written comments by March 30, 2007.

ADDRESSES: Send your comments or requests for more information to John Esperance, Planning Team Leader, Division of Refuge Planning, P.O. Box 25486, Denver Federal Center, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: John Esperance, 303–236–4369, or Michael Spratt, 303–236–4366.

SUPPLEMENTARY INFORMATION: With this notice, the Service initiates a CCP for twelve (12) NWRs in various locations throughout the State of North Dakota.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the Service to develop a CCP for each NWR. The purpose in developing a CCP is to

provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

The Service established each unit of the National Wildlife Refuge System, including these twelve (12) NWRs, with specific purposes. We use these purposes to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses will occur on these NWRs. The planning process is a way for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with each NWR and the mission of the National Wildlife Refuge System.

The Service will conduct a comprehensive conservation planning process that will provide opportunity for Tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and public comment. We request input for issues, concerns, ideas, and suggestions for the future management of these NWRs in North Dakota. We invite anyone interested to respond to the following two questions.

(1) What problems or issues do you want to see addressed in the CCP?

(2) What improvements would you recommend for these twelve (12) NWRs?

We have provided the above questions for your optional use; you are not required to provide information to us. The planning team developed these questions to gather information about individual issues and ideas concerning these NWRs. Our planning team will use the comments it receives as part of the planning process; however, we will not reference individual comments in our reports or directly respond to them.

We will also give the public an opportunity to provide input at an open house to scope issues and concerns. You can obtain the schedule from the Planning Team Leaders (see **ADDRESSES**). You may also submit comments anytime during the planning process by writing to the above addresses. All information provided voluntarily by mail, phone, or at public meetings becomes part of our official public record (i.e., names, addresses, letters of comment, input recorded during meetings). If a private citizen or organization requests this information under the Freedom of Information Act, we may provide informational copies.

The Service will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those regulations. All comments we receive from individuals on our environmental assessments and environmental impact statements become part of the official public record. We will handle requests for such comments in accordance with the Freedom of Information Act, NEPA (40 CFR 1506.6(f)), and other Departmental and Service policies and procedures. When we receive a request, we generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, to the extent permissible by law, we will not provide the telephone number of the commenting individual in response to such requests.

North Dakota NWRs

These twelve (12) NWRs were established for the protection of critical migratory waterfowl habitat within the State of North Dakota. Through these NWRs, the Service manages a complex of wetlands in 34 counties within North Dakota. The wetlands range from seasonal shallow basins to deeper, more permanent ponds that provide resting and feeding areas for millions of birds during Spring and Fall migration.

Dated: January 30, 2007.

James J. Slack,

Deputy Regional Director, Region 6, Denver, Colorado.

[FR Doc. E7–3463 Filed 2–27–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Wetland Management Districts, North Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service, we) intend to gather information necessary to prepare a comprehensive conservation plan (CCP) and associated environmental documents for nine (9) Wetland Management Districts (WMDs) located in the State of North Dakota. The nine (9) WMDs are Devils Lake, Arrowwood, Valley City, Chase Lake, Kulm, Audubon, J. Clark Salyer, Lostwood and Crosby. We furnish this notice in compliance with our CCP policy to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: To ensure consideration, we must receive your written comments by March 30, 2007.

ADDRESSES: Send your comments or requests for more information to John Esperance, Planning Team Leader, Division of Refuge Planning, P.O. Box 25486, Denver Federal Center, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: John Esperance, 303–236–4369, or Michael Spratt, 303–236–4366.

SUPPLEMENTARY INFORMATION: With this notice, the Service initiates a CCP for nine (9) WMDs in various locations throughout the State of North Dakota.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the Service to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

The Service established each unit of the National Wildlife Refuge System, including these nine (9) WMDs, with specific purposes. We use these

purposes to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses will occur on these WMDs. The planning process is a way for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with each WMD and the mission of the National Wildlife Refuge System.

The Service will conduct a comprehensive conservation planning process that will provide opportunity for Tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and public comment. We request input for issues, concerns, ideas, and suggestions for the future management of these WMDs in North Dakota. We invite anyone interested to respond to the following two questions.

(1) What problems or issues do you want to see addressed in the CCP?

(2) What improvements would you recommend for these nine (9) WMDs?

We have provided the above questions for your optional use; you are not required to provide information to us. The planning team developed these questions to gather information about individual issues and ideas concerning these WMDs. Our planning team will use the comments it receives as part of the planning process; however, we will not reference individual comments in our reports or directly respond to them.

We will also give the public an opportunity to provide input at an open house to scope issues and concerns. You can obtain the schedule from the Planning Team Leaders (see **ADDRESSES**). You may also submit comments anytime during the planning process by writing to the above addresses. All information provided voluntarily by mail, phone, or at public meetings becomes part of our official public record (i.e., names, addresses, letters of comment, input recorded during meetings). If a private citizen or organization requests this information under the Freedom of Information Act, we may provide informational copies.

The Service will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those regulations. All comments we receive from individuals on our environmental assessments and environmental impact statements become part of the official public record. We will handle requests for such comments in accordance with the Freedom of Information Act, NEPA (40 CFR 1506.6(f)), and other Departmental and Service policies and procedures. When we receive a request, we generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, to the extent permissible by law, we will not provide the telephone number of the commenting individual in response to such requests.

North Dakota WMDs

These nine (9) WMDs were established for the protection of critical migratory waterfowl habitat within the State of North Dakota. Through these WMDs, the Service manages a complex of wetlands in 34 counties within North Dakota. The wetlands range from seasonal shallow basins to deeper, more permanent ponds that provide resting and feeding areas for millions of birds during Spring and Fall migration.

Dated: January 30, 2007.

James J. Slack,

Deputy Regional Director, Region 6, Denver, Colorado.

[FR Doc. E7–3466 Filed 2–27–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Loan Guaranty, Insurance and Interest Subsidy Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Submission of Information Collection to the Office of Management and Budget.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is submitting the information collection, titled 25 CFR 103, Loan Guaranty, Insurance, and Interest Subsidy Program, OMB Control Number 1076–0020 for renewal.

DATES: Submit comments on or before March 30, 2007.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for Department of the Interior, by facsimile at (202) 395–6566 or you may send an e-mail to: *OIRA_DOCKET@ omb.eop.gov.*

Please send a copy of your comments to David Johnson, Acting Director, Division of Capital Investment, Office of Indian Energy and Economic Development, Department of the Interior, 1951 Constitution Avenue, NW., Mail Stop 20–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from Woodrow B. Sneed, Financial Analyst, Division of Capital Investment, 1951 Constitution Avenue, NW., Mail Stop 20–SIB, Washington, DC 20240 or by telefacsimile at (202) 208–6512.

SUPPLEMENTARY INFORMATION: The purpose of the Loan Guaranty, Insurance, and Interest Subsidy Program, 25 U.S.C. 1481 *et seq.* and 25 U.S.C. 1511 *et seq.*, is to encourage private lending to individual Indians and organizations of Indians, by providing lenders with loan guaranties or loan insurance to reduce their potential risk. Lenders, borrowers, and the loan purpose all must qualify under Program terms. In addition, the Secretary of the Interior must be satisfied that there is a reasonable prospect that the loan will be repaid. BIA collects information under the regulations, 25 CFR 103, to assure compliance with Program requirements. BIA forms concerned with this regulation include: 5–4753 Loan Guaranty Agreement, 5–4754 Loan Insurance Agreement, 5–4754a Notice of Insured Loan, 5–4755 Request to BIA for Loan Guaranty, Loan Insurance, and/or Interest Subsidy, 5–4749 BIA Interest Subsidy Report, 5–4759 Assignment of Loan Documents and Related Rights, 5–4760a Notice of Default, and 5–4760b Claim for Loss. A request for comments on this information collection request appeared in the **Federal Register** on November 24, 2006 (71 FR 67895). No comments were received.

Request for Comments

The Office of Indian Energy and Economic Development requests you to send your comments on this collection to the two locations listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of this information collection 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 (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden

of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

Once this notice is published in the **Federal Register**, OMB has up to 60 days to make a decision on approving this collection but may decide after 30 days; therefore, your comments will receive maximum attention if sent within the 30 day period.

OMB Approval Number: 1076–0020.

Title: 25 CFR 103, Loan Guaranty, Insurance, and Interest Subsidy Program.

Brief Description of Collection: The Loan Guaranty, Insurance, and Interest Subsidy Program (Program) was established by the Act of April 12, 1974, as amended, 88 Stat. 79, 25 U.S.C. 1481 *et seq.* and 25 U.S.C. 1511 *et seq.* The Program has existed since 1974 and the regulations implementing it have existed since 1975, with significant revision in 2001. It is necessary to collect information from users of this program in order to determine eligibility and credit worthiness of Indian applicants for loans. Submission of this information is mandatory for respondent to receive or maintain a benefit.

Type of Review: Renewal.

Respondents: Commercial banks.

Number of Respondents: 612.

Number of Responses: 1,527.

Estimated Time per Response: 2 hours.

Frequency of Response: As needed.

Total Annual Burden to Respondents: 3,054.

Dated: February 23, 2007.

Debbie L. Clark,

Deputy Assistant Secretary—Indian Affairs (Management).

[FR Doc. 07–920 Filed 2–26–07; 12:05 pm]

BILLING CODE 4310–XN–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) is submitting to the Office of Management and Budget (OMB) the information collection, titled Grazing Permits, 25 CFR 166, OMB Control Number 1076–0157, for renewal. The purpose of this data collection is to collect information for 25 CFR 166 General Grazing Regulations as required by the Paperwork Reduction Act.

DATES: Submit comments on or before March 30, 2007.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior, by facsimile at (202) 395–6566 or you may send an e-mail to: *OIRA_DOCKET@omb.eop.gov*.

Please send a copy of your comments to James R. Orwin, BIA, Office of Trust Services, Division of Natural Resources, Mail Stop 4655–MIB, 1849 C Street NW., Washington, DC 20240, or by Fax at (202) 219–0006.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from James R. Orwin at (202) 208–6464 at the BIA Central Office in Washington, DC.

SUPPLEMENTARY INFORMATION: This collection of information is authorized under Public Law 103–177, the ''American Indian Agricultural Resource Management Act,'' as amended. Tribes, tribal organizations, individual Indians, and those entering into permits with tribes or individual Indians submit information required by the regulation. The information is used by the Bureau of Indian Affairs to determine:

(a) Whether or not a permit for grazing may be approved or granted;

(b) The value of each permit;

(c) The appropriate compensation to landowners; and

(d) Provisions for violations of permit and trespass.

A request for comments on this information collection request appeared in the **Federal Register** on October 30, 2006 (71 FR 63346). No comments were received. An administrative fee of up to 3 percent of the annual grazing rental is collected to reimburse the BIA for administration of the grazing permit program. In recent years, administrative fees have generated approximately $175,000 per year.

Request for Comments

The Bureau of Indian Affairs requests you to send your comments on this collection to the locations listed in the **ADDRESSES** section. Your comments should address:

(a) The necessity of this information collection 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 (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

OMB has up to 60 days to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them closer to 30 days than 60 days.

Information Collection Abstract

OMB Control Number: 1076–0157.

Type of review: Renewal.

Title: Grazing Permits, 25 CFR 166.

Brief Description of Collection: Information is collected through a grazing permit application. Respondent supplies all information needed to prepare a grazing permit, including: name, address, range unit requested, number of livestock, season of use, livestock owner's brand, kind of livestock, mortgage holder information, ownership of livestock, and requested term of permit. Response is mandatory for respondents to supply the above information in order to obtain a grazing permit.

Respondents: Possible respondents include: individual tribal members, individual non-Indians, and tribal governments. Response is mandatory for respondents who wish to obtain a grazing permit.

Number of Respondents: 1,000.

Estimated Time per Response: 20 minutes (⅓ hour).

Frequency of Response: Annually and as needed.

Total Annual Responses: 2,570.

Total Annual Hourly Burden to Respondents: 856 hours.

Total Filing/Administrative Fees: $175,000 per year.

Dated: February 22, 2007.

Grayford Payne,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E7–3495 Filed 2–27–07; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is submitting this information collection request to the Office of Management and Budget (OMB) for review and renewal. The collection is: 25 CFR 151 Land Acquisitions, OMB Control Number 1076–0100.

DATES: Comments must be received on or before March 30, 2007, to be assured of consideration.

ADDRESSES: Comments should be sent to the Desk Officer for the Department of the Interior at the Office of Management and Budget. You may submit comments either by telefacsimile at (202) 395–6566, or by e-mail to *OIRA_DOCKET@omb.eop.gov*.

Please send a copy to Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop 4639–MIB, 1849 C Street NW., Washington, DC 20240–0001.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Ben Burshia at (202) 219–1195.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. This collection covers 25 CFR 151 as presently approved. The Bureau of Indian Affairs, Division of Real Estate Services, is proceeding with this public comment period as the next step in obtaining a normal information collection clearance from OMB. The request contains (1) Type of review, (2) title, (3) summary of the collection, (4) respondents, (5) frequency of collection, (6) reporting and record keeping requirements, and (7) reason for response.

A **Federal Register** notice was published on December 13, 2006 (71 FR 74932). No comments were received.

25 CFR 151—Land Acquisitions

OMB Control Number: 1076–0100.

Type of review: Extension of a currently approved collection.

Title: Acquisition of Title to Land in Trust, 25 CFR 151.

Summary: The Secretary of the Interior has statutory authority to acquire lands in trust status for individual Indians and federally recognized Indian tribes. The Secretary requests information in order to identify the parties involved and a description of the land in question. Respondents are Native American tribes or individuals who request acquisition of real property into trust status. The Secretary also requests additional information necessary to satisfy those pertinent factors listed in 25 CFR 151.10 or 151.11. The information is used to determine whether or not the Secretary will approve an applicant's request. No specific form is used, but respondents supply information and data, in accordance with 25 CFR 151, so that the Secretary may make an evaluation and determination in accordance with established Federal factors, rules and policies.

Frequency of Collection: One Time.

Description of Respondents: Native American tribes and individuals desiring acquisition of lands in trust status.

Total Respondents: 1,000.

Total Annual Responses: 1,000.

Total Annual Burden Hours: 67,800 hours.

Reason for Response: Required to obtain or retain benefits.

The Bureau of Indian Affairs solicits comments in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) Evaluate the bureau's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond. Any public comments will be addressed in the Bureau of Indian Affairs' submission of the information collection request to the Office of Management and Budget.

We will not sponsor nor conduct a request for information, and you need not respond to such a request, unless there is a valid OMB Control Number.

Please note that comments are open to public review. If you wish to have your name and address withheld from the reviewing public, you must state so prominently at the beginning of your comments. We will honor your request to the limit of the appropriate laws. All comments from businesses or their representatives will be available for public review. We may decide to withhold information for other reasons.

The Office of Management and Budget has between 30 and 60 days to make a decision about this information collection request; therefore, comments received closer to 30 days have a better chance of being considered.

Dated: February 22, 2007.

Grayford Payne,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E7–3496 Filed 2–27–07; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection for Probate to the Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Submission to Office of Management and Budget for renewal.

SUMMARY: As required by the Paperwork Reduction Act of 1995, we are submitting to the Office of Management and Budget the information collection found in the general Probate of Indian Decedents' Estates, Except for Member of the Five Civilized Tribes regulations. The purpose of this data collection is to ensure that Probate regulations are administered for the benefit of individual Indians and any persons having claims against an Indian decedent's estate.

DATES: Comments on this proposed information collection must be received by March 30, 2007.

ADDRESSES: You may submit comments to the Desk Officer for the Department of the Interior by e-mail to *OIRA_DOCKET@omb.eop.gov*. or by facsimile to (202) 395–6566.

Send a copy of the comments to Bill Titchwy, Bureau of Indian Affairs Western Regional Office, Division of Probate, 400 N. Fifth Street, 10th Floor, Two Arizona Center, Phoenix, AZ 85004. Comments may also be telefaxed to (602) 379–4005. We cannot accept E-mail comments at this time.

FOR FURTHER INFORMATION CONTACT: William Titchwy, 602–379–4002.

SUPPLEMENTARY INFORMATION: The information provided through collection requirements is used by the Department of the Interior, BIA, to determine heirs and divide any funds held by the BIA for an Indian decedent and to divide the decedent's trust and restricted real

property. The information is particularly used by the Bureau of Indian Affairs in:

(a) Instructing an individual in starting the probate process;

(b) Preparing a probate package for review;

(c) Filing claims;

(d) Disbursing assets; and

(e) Filing appeals for adverse decisions.

Request for Comments

A notice requesting comments was published in the **Federal Register** November 1, 2006 (71 FR 64391). No comments were received. The Bureau of Indian Affairs now requests your comments on this collection be sent to the Desk Officer for the Department of Interior at the Office of Management and Budget. Please address the following:

(a) The necessity of this information collection 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 (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as facilitating use of automation for collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

OMB has 60 days in which to make a decision about this collection but may act after 30 days. Therefore, to ensure maximum consideration of your comments, please send close to the 30 days after publication.

OMB Control Number: 1076–0156.

Type of Review: Renewal.

Title: Probate of Indian Estates, Except for Members of the Five Civilized Tribes, 25 CFR 15.

Brief Description of Collection: Information is collected through the probate process when BIA learns of a decedent's death from a neighbor, friend, or any other interested person who provides a copy of decedent's obituary notice from a local newspaper or when BIA receives an affidavit of death prepared by someone who knows about the decedent. BIA also requires other documents to process the probate package. An interested party must inform BIA if any of the documents or information identified are not available.

Respondents: Possible respondents include: Individual tribal members, individual non-Indians, individual tribal member-owned businesses, non-Indian owned businesses, tribal governments, and land owners who are seeking a benefit.

Number of Responses: 208,073 annually.

Annual hours: 1,129,157.

Estimated Time per Response: Varies from 1/2 to 44.25 hours.

Frequency of Response: As required.

Dated: February 23, 2007.

Grayford Payne,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E7–3497 Filed 2–27–07; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Documented Petitions for Federal Acknowledgment as an Indian Tribe, Submission to OMB for Renewal

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for Documented Petitions for Federal Acknowledgment as an Indian Tribe is submitted to Office of Information and Regulatory Affairs, Office of Management and Budget for extension.

DATES: Submit comments on or before March 30, 2007.

ADDRESSES: Send your written comments to Attention: Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, either by facsimile to 202–395–6566 or by e-mail to *OIRA_DOCKET@omb.eop.gov*. Please send a duplicate copy to R. Lee Fleming, Director, Office of Federal Acknowledgment, Assistant Secretary—Indian Affairs, 1951 Constitution Avenue, NW., MS–34B SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection submission should be directed to R. Lee Fleming, Director, Office of Federal Acknowledgment, Assistant Secretary—Indian Affairs, 1951 Constitution Avenue, NW., MS–34B SIB, Washington, DC 20240. You may also call (202) 513–7650.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a government-to-government relationship with the United States. Federal recognition makes the group eligible for benefits from the Federal government. No respondents made any comments regarding this information collection.

II. Method of Collection

The acknowledgment regulations at 25 CFR Part 83 contain seven criteria (§ 83.7) which unrecognized groups seeking Federal acknowledgment as Indian tribes must demonstrate that they meet. Information collected from petitioning groups under these regulations provides anthropological, genealogical and historical data used by the Assistant Secretary—Indian Affairs to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a government-to-government relationship with the United States. BIA forms 8304, 8305, and 8306 are optional in providing a complete list of members of the group seeking recognition. Respondents are not required to retain copies of information submitted to the Department of the Interior but will probably maintain copies for their own use. No periodic reports are required.

III. Data

Title: Documents for Petition for Federal Acknowledgment as an Indian Tribe, 25 CFR Part 83.

OMB Control Number: 1076–0104.

Current Expiration Date: February 28, 2007.

Type of Review: Extension of a currently approved collection.

Affected Entities: Groups petitioning for Federal acknowledgment as Indian tribes.

Response: Respondents are seeking to obtain a benefit.

Estimated Annual Number of Petitioners: 10.

Estimated Time per Petition: 2,075 hours.

Estimated Total Annual Burden Hours: 20,750.

IV. Request for Comments

You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including hours and cost) 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 collection techniques or forms of information technology.

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; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, and other contact information (such as Internet address, FAX, or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

OMB has up to 60 days to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them closer to 30 days than 60 days.

Dated: February 23, 2007.

Grayford Payne,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E7–3498 Filed 2–27–07; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Privacy Act of 1974, as Amended; Amendment of an Existing System of Records

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed amendment of an existing system of records.

SUMMARY: Under the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of our intent to amend the existing Privacy Act system of records entitled, LLM–2 ''Range Management System.'' The system notice is published in its entirety below. Editorial changes have been made to ''Categories of individuals covered by the system'' and ''Categories of Records in the System'' to clarify who is covered and the type of information in the system.

Under ''Routine Uses,'' there are changes in the provisions for ''Disclosures outside the Department of the Interior.''

Changes are also made to the ''Record access procedures'' and ''Retention and disposal'' under ''Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.''

The Department of the Interior is issuing public notice of its intent to amend portions of an existing Privacy Act system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a). This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of amendment of an existing records system maintained by the agency (5 U.S.C. 552a(e)(4)).

DATES: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the agency's intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this proposed amendment may do so by submitting comments in writing to the Privacy Act Officer, Bureau of Land Management, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period unless comments are received that would require a contrary determination. The Department will publish a revised notice if changes are made based upon a review of comments received.

FOR FURTHER INFORMATION CONTACT: Robert Roudabush, Acting Division Chief, Rangeland Resources Division, 1849 C St., NW., Room 201 LS, Washington, DC 20240, phone number 202–785–6569, or e-mail *Rob_Roudabush@blm.gov*

SUPPLEMENTARY INFORMATION: The intent of amending this system notice is to align the LLM–2 system more closely with the mission of the BLM Rangeland Management Program, to address administrative changes and the current needs of the bureau, and to correct minor typographical errors. The following changes are being proposed to LLM–2.

The BLM is updating this system notice to delete the overly broad language of a Routine Use disclosure to certain members of the general public. BLM is further rewriting Routine Use (2) to assist Federal, State and local agencies to better manage their activities related to grazing programs.

Under ''Categories of individuals covered by the system,'' ''Individuals owning grazing leases and permits issued by BLM'' is changed to ''Individuals to whom BLM issues grazing leases and permits.''

The ''Categories of Records in the System'' has been rewritten to clarify the types of information in the system and to make explicit that both paper and electronic records are included.

Routine Uses have been renumbered to reflect the deletion of one Routine Use.

A previous Routine Use that stated that the records would be released ''to a member of the general public in response to a specific request for pertinent information,'' did not provide a discernable standard for determining the scope of the Routine Use.

Routine Use (2) has been revised to provide for release of information from the system to Federal, State and local agencies to enable them to adequately manage their activities relating to the BLM's grazing program. The changes to this Routine Use will assist in the efficient administration of Federal, State and local activities related to the BLM grazing program and is therefore compatible with the purpose for which we collected the information.

Under ''Retention and disposal,'' we have updated the BLM manual section reference to the current manual section.

Under ''Records Access Procedures,'' we have deleted the phrase ''as specifically as possible.'' The Access

Procedure will now read ''Describe the records sought.''

Dated: February 22, 2007.

Robert Roudabush,

Acting Assistant Director, Renewable Resources and Planning, Bureau of Land Management.

INTERIOR/LLM–2

SYSTEM NAME:

Range Management System—Interior, LLM–2.

SYSTEM LOCATION:

U.S. Department of the Interior, Bureau of Land Management, Denver Federal Center, Bldg. 50, Denver, Colorado 80225.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals to whom BLM issues grazing permits or leases.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records, paper and electronic, contain the lessee's or permittee's name, address, the Bureau's assigned case file number, grazing allotment descriptions, grazing applications, grazing preference summary and history, copies of the grazing permit or lease, grazing fee billing statements, grazing exchange-of-use agreement, evidence of ownership or control of base property, notice of lienholder interest in base property, corporate or partnership documentation, affiliate documentation, notice of authorized representative, livestock control agreements, copies of brand registration, closed unauthorized use case records, Cooperative Range Improvement Agreements, Range Improvement Permits, Assignment of Range Improvements, grazing decisions, and correspondence to, or received from, the permittee or lessee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 315, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) to identify the permittees and lessees authorized to graze lands administered by the Bureau of Land Management, (b) to print statements of grazing preference, grazing authorizations, billings for grazing fees due, and other reports, (c) to maintain the information required to administer livestock grazing on public rangelands in accordance with applicable laws and regulations, and (d) to provide information concerning the grazing permittees and lessees for administrative use.

Disclosures outside the Department of the Interior may be made: (1) To the Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when (a) the Department or any component of the Department, any Departmental employee acting in his or her official capacity, or any Departmental employee acting in his or her individual capacity where the Department of Justice has agreed to represent the employee is a party in the suit and (b) we deem the disclosure to be relevant and necessary to the proceeding, and compatible with the purpose for which we compiled the information; (2) to Federal, State, or local agencies to manage their activities related to BLM's grazing program; and (3) to a congressional office from the record of an individual in response to a written inquiry the individual has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tape and/or manual index. Paper case records are maintained in locking filing cabinets at BLM field offices.

RETRIEVABILITY:

Indexed by name of permittee or lessee and grazing authorization number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for manual and automated records. Access to records in the system is limited to authorized personnel whose official duties require such access. Paper records are maintained in locked file cabinets and/or in secured rooms. Electronic records conform to Office of Management and Budget and Departmental guidelines reflecting the implementation of the Federal Information Security Management Act. The electronic data will be protected through user identification, passwords, database permissions, and software controls. Such security measures will establish access levels for different types of users. A Privacy Impact Assessment was completed on the system to ensure that privacy protection measures were in place.

RETENTION AND DISPOSAL:

BLM Manual(s) 1220, Records and Information Management, Appendix II, GRS/BLM Combined Records Schedule, Schedule 20, Item 42. Destroyed when superseded or no longer needed for administrative purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Rangeland Management, U.S. Department of the Interior, Bureau of Land Management, (WO–220), 1849 C St., NW., Washington, DC 20240.

NOTIFICATION PROCEDURE:

To determine whether records are maintained on you in this system, write to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your records, write to the System Manager. Describe the records sought. If copies are desired, indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To request corrections or the removal of material from your files, write the System Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Grazing Permittees or Lessees

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–3477 Filed 2–27–07; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES–07–05]

Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability and Notice of Public Hearings for the Draft Environmental Impact Statement for the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions

of NEPA, the Department of the Interior (Department), acting through the Bureau of Reclamation (Reclamation), has prepared a draft environmental impact statement (Draft EIS) on the proposed adoption of specific Colorado River Lower Basin shortage guidelines and coordinated reservoir management strategies to address operations of Lake Powell and Lake Mead, particularly under low reservoir conditions. This action is proposed in order to provide a greater degree of certainty to U.S. Colorado River water users and managers of the Colorado River Basin by providing detailed and objective guidelines for the operations of Lake Powell and Lake Mead, thereby allowing water managers and water users in the Lower Basin to know when, and by how much, water deliveries will be reduced in drought and other low reservoir conditions. The Department proposes that these guidelines be interim in duration and extend through 2026.

Cooperating agencies are the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service, the National Park Service (NPS), the Western Area Power Administration (Western), and the United States Section of the International Boundary and Water Commission.

DATES AND ADDRESSES: A public review period commences with the publication of this notice. Comments on the Draft EIS must be submitted no later than Monday, April 30, 2007, to: Regional Director, Lower Colorado Region, Bureau of Reclamation, *Attention:* BCOO–1000, P.O. Box 61470, Boulder City, Nevada 89006–1470; faxogram at (702) 293–8156; or e-mail at *strategies@lc.usbr.gov*.

Reclamation will conduct three public hearings to receive written or oral comments from the public on the Draft EIS at the following locations:

- Tuesday, April 3, 2007—6 p.m. to 9 p.m., Henderson Convention Center, Sierra Room, 200 South Water Street, Henderson, Nevada.
- Wednesday, April 4, 2007—6 p.m. to 9 p.m., Phoenix Airport Marriott, Buckhorn Room, 1101 North 44th Street, Phoenix, Arizona.
- Thursday, April 5, 2007—6 p.m. to 9 p.m., Hilton Salt Lake City Center, Canyon Room A & B, 255 South West Temple, Salt Lake City, Utah.

If special assistance is required regarding accommodations for attendance at any of the public hearings, please contact Nan Yoder at (702) 293–8495, faxogram at (702) 293–8156, or e-mail at *nyoder@lc.usbr.gov* no less than 5 working days prior to the applicable meeting(s).

The Draft EIS is electronically available for viewing and copying at Reclamation's project Web site at: *http://www.usbr.gov/lc/region/programs/strategies.html*. Alternatively, a compact disc or hard copy is available upon written request to: Regional Director, Lower Colorado Region, Bureau of Reclamation, Attention: BCOO–1000, P.O. Box 61470, Boulder City, Nevada 89006–1470; faxogram at (702) 293–8156; or e-mail at *strategies@lc.usbr.gov*.

Copies of the Draft EIS are available for public inspection and review at the following locations:

- Bureau of Reclamation, Lower Colorado Regional Office, 400 Railroad Avenue, Boulder City, Nevada.
- Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 7220, Salt Lake City, Utah.
- Bureau of Reclamation, Phoenix Area Office, 6150 West Thunderbird Road, Glendale, Arizona.
- Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, Arizona.
- Bureau of Reclamation Library, Denver Federal Center, 6th Avenue and Kipling, Building 67, Room 167, Denver, Colorado.
- Department of the Interior, Natural Resources Library 1849 C Street NW., Washington, DC.
- Yuma County Library, 185 South Main Street, Yuma, Arizona.
- Palo Verde Valley Library, 125 West Chanslor Way, Blythe, California.
- Mohave County Library, 1170 Hancock Road, Bullhead City, Arizona.
- Laughlin Library, 2840 South Needles Highway, Laughlin, Nevada.
- Las Vegas Clark County Library, 833 Las Vegas Boulevard N, Las Vegas, Nevada.
- James I. Gibson Library, 280 Water Street, Henderson, Nevada.

FOR FURTHER INFORMATION CONTACT: Terrance J. Fulp, Ph.D., at (702) 293–8500 or e-mail at *strategies@lc.usbr.gov*; and/or Randall Peterson at (801) 524–3633 or e-mail at *strategies@lc.usbr.gov*.

SUPPLEMENTARY INFORMATION: During the period from 2000–2006, the Colorado River has experienced the worst drought conditions in approximately one hundred years of recorded history. During this period, storage in Colorado River reservoirs has dropped from nearly full to less than 60 percent of capacity at the end of 2006. Currently, the Department does not have specific operational guidelines in place to address the operation of Lake Mead and Lake Powell during drought and low reservoir conditions.

Accordingly, the Department proposes the adoption of specific interim guidelines for Lower Basin shortages and coordinated operations of Lake Powell and Lake Mead. The proposed federal action will be implemented through the adoption of interim guidelines in effect through 2026 that would be used each year by the Department in implementing the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968, through issuance of the Annual Operating Plan for Colorado River Reservoirs.

The proposed federal action considers four operational elements that collectively are designed to address the purpose and need for the proposed federal action. These elements are addressed in each of the alternatives described and analyzed in the Draft EIS. The interim guidelines would be used by the Secretary of the Department of the Interior (Secretary) to:

- Determine those circumstances under which the Secretary would reduce the annual amount of water available for consumptive use from Lake Mead to the Colorado River Lower Division states (Arizona, California, and Nevada) below 7.5 million acre-feet (a ''Shortage'') pursuant to Article II(B)(3) of the United States Supreme Court in the case of *Arizona* v. *California*, 547 U.S.____(2006);
- Define the coordinated operation of Lake Powell and Lake Mead to provide improved operation of these two reservoirs, particularly under low reservoir conditions;
- Allow for the storage and delivery, pursuant to applicable federal law, of conserved Colorado River system and non-system water in Lake Mead to increase the flexibility of meeting water use needs from Lake Mead, particularly under drought and low reservoir conditions; and
- Determine those conditions under which the Secretary may declare the availability of surplus water for use within the Lower Division states. The proposed federal action would modify the substance of the existing Interim Surplus Guidelines (ISG), published in the **Federal Register** on January 25, 2001 (66 FR 7772), and the term of the ISG from 2016 to 2026.

The purpose of the proposed federal action is to: (1) Improve Reclamation's management of the Colorado River by considering the trade-offs between the frequency and magnitude of reductions of water deliveries, and considering the effects on water storage in Lake Powell and Lake Mead, water supply, power

production, recreation, and other environmental resources; (2) provide mainstream U.S. users of Colorado River water, particularly those in the Lower Division states, a greater degree of predictability with respect to the amount of annual water deliveries in future years, particularly under drought and low reservoir conditions; and, (3) provide additional mechanisms for the storage and delivery of water supplies in Lake Mead.

The Draft EIS presents four possible action alternatives for implementation, plus a ''No Action Alternative.'' Reclamation has not identified a preferred alternative in this Draft EIS. The preferred alternative will be identified following public comments on the Draft EIS and will be expressed in the Final EIS. The action alternatives reflect input from Reclamation staff, the cooperating agencies, stakeholders, and other interested parties. Reclamation received two written proposals for alternatives that met the purpose and need of the proposed federal action, one from the Basin States and another from a consortium of environmental organizations. These proposals were used and refined by Reclamation to formulate two of the alternatives considered and analyzed in this Draft EIS: the Basin States Alternative and the Conservation Before Shortage Alternative. A third alternative (Water Supply Alternative) was developed by Reclamation and a fourth alternative (Reservoir Storage Alternative) was developed in coordination with the NPS and Western.

The Basin States Alternative proposes a coordinated operation of Lake Powell and Lake Mead that would minimize shortages in the Lower Basin and avoid the risk of curtailments of use in the Upper Basin. This alternative also provides a mechanism, Intentionally Created Surplus (ICS), for promoting water conservation in the Lower Basin.

The Conservation Before Shortage Alternative includes voluntary, compensated reductions in water use to minimize involuntary shortages in the Lower Basin and avoid risk of curtailments of use in the Upper Basin. This alternative also provides a mechanism for promoting water conservation in the Lower Basin by expanding the ICS mechanism.

The Water Supply Alternative is intended to maximize water deliveries at the expense of retaining water in storage in the reservoirs for future use. This alternative would implement shortages only when insufficient water to meet entitlements is available in Lake Mead.

The Reservoir Storage Alternative would keep more water in storage in Lake Powell and Lake Mead by reducing water deliveries and increasing shortages to benefit power and recreational interests; and this alternative also provides a mechanism for promoting water conservation in the Lower Basin.

Public Disclosure

It is our practice to make comments, including names, home addresses, home telephone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: February 2, 2007.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E7–3447 Filed 2–27–07; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,281]

Airtex Products LP, Including On-Site Leased Workers of Staffmark and Aid Temporary Services, Inc.; Marked Tree, Arkansas; Notice of Revised Determination on Reconsideration of Alternative Trade Adjustment Assistance

By letter dated February 8, 2007, a company official requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA) applicable to workers of the subject firm. The negative determination was signed on January 24, 2007, and was published in the **Federal Register** on February 14, 2007 (72 FR 7087).

The workers of Airtex Products LP, including on-site leased workers of Staffmark and Aid Temporary Services, Inc., Marked Tree, Arkansas were certified eligible to apply for Trade Adjustment Assistance (TAA) on January 24, 2007.

The initial ATAA investigation determined that there was not a significant number of workers in the workers' firm that are 50 years of age or older, and that the skills of the subject worker group are easily transferable to other positions in the local area.

In the request for reconsideration, the company official resubmitted correct employment numbers which show that a significant number or proportion of the worker group of the subject firm are fifty years of age or older. The company official also provided new information confirming that the skills of the workers at the subject firm are not easily transferable in the local commuting area.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Airtex Products LP, including on-site leased workers of Staffmark and Aid Temporary Services, Inc., Marked Tree, Arkansas, who became totally or partially separated from employment on or after October 20, 2005 through January 24, 2009, are eligible to apply for trade adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 21st day of February, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–3460 Filed 2–27–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,692]

Anaheim Manufacturing Company, a Subsidiary of Western Industries, Including On-Site Leased Workers From Selectemp; Anaheim, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 12, 2007, applicable to workers of Anaheim Manufacturing Company, a subsidiary of Western Industries, Anaheim, California, including on-site leased workers from Selectemp. The notice was published in the **Federal Register** on January 25, 2007 (72 FR 3424).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of food waste disposers. Review of the certification shows that there was a typographical error in the heading of the document which indicated that the workers are certified eligible to apply for alternative trade adjustment assistance (ATAA). The heading should have read, ''Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance.'' The Department concluded in its initial ATAA investigation that workers of the subject firm possess skills that are easily transferable to other positions in the local area. Therefore, the worker group cannot be certified eligible to apply for ATAA. Accordingly, the certification is being amended to correct this error.

The amended notice applicable to TA–W–60,692 is hereby issued as follows:

All workers of Anaheim Manufacturing Company, a subsidiary of Western Industries, Anaheim, California, including on-site leased workers from Selectemp, who became totally or partially separated from employment on or after September 25, 2006 through two years from the date of certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

I further determine that all workers of Anaheim Manufacturing Company, a subsidiary of Western Industries, Anaheim, California, including on-site leased workers from Selectemp, are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 20th day of February 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–3461 Filed 2–27–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,863]

Delphi Corporation, Automotive Holdings Group; Moraine, OH; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Delphi Corporation, Automotive Holdings Group, Moraine, Ohio. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–59,863; Delphi Corporation, Automotive Holdings Group, Moraine, Ohio (February 20, 2007).

Signed at Washington, DC, this 21st day of February 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–3458 Filed 2–27–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 12, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 12, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of February 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 2/12/07 and 2/16/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60935	Georgia Narrow Fabrics (Comp)	Jesup, GA	02/12/07	01/26/07

APPENDIX—Continued

[TAA petitions instituted between 2/12/07 and 2/16/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60936	Duro Textiles LLC (Comp)	Fall River, MA	02/12/07	02/07/07
60937	Key Fashion Inc. (Wkrs)	Brooklyn, NY	02/12/07	02/08/07
60938	Plastron Industries (Wkrs)	Bensenville, IL	02/12/07	02/06/07
60939	New Orleans Cuisine (State)	Grambling, LA	02/12/07	01/16/07
60940	U.S. Global Flag Corporation (UNITE)	Paterson, NJ	02/12/07	01/31/07
60941	Hoover Precision Products, Inc. (Comp)	East Granby, CT	02/12/07	02/02/07
60942	Weyerhaeuser—Bauman Lumber (IAMAW)	Lebanon, OR	02/12/07	02/09/07
60943	Teamlinden/Divison of Fisher and Company (Comp)	Linden, TN	02/12/07	01/23/07
60944	Morton Salt (State)	New Iberia, LA	02/12/07	02/08/07
60945	Miss Brenner Wet Printing, Inc. (Comp)	Clifton, NJ	02/12/07	02/07/07
60946	Safer Textiles Processing Corporation (Comp)	Newark, NJ	02/12/07	02/07/07
60947	Meadows Knitting Corporation (Comp)	Newark, NJ	02/12/07	02/07/07
60948	Kuttner Prints, Inc. (Comp)	East Rutherford, NJ	02/12/07	02/07/07
60949	National Apparel, Inc. (Wkrs)	San Francisco, CA	02/13/07	01/30/07
60950	Northern Hardwoods (Comp)	South Range, MI	02/13/07	02/09/07
60951	Hartford Technologies (Wkrs)	Rocky Hill, CT	02/13/07	02/09/07
60952	Scovill Fasteners, Inc. (Comp)	Clarkesville, GA	02/13/07	02/02/07
60953	Broyhill Furniture Ind. #55 (Wkrs)	Lenoir, NC	02/13/07	01/07/07
60954	Congoleum Corporation (Comp)	Trainer, PA	02/13/07	02/12/07
60955	Red Lion Manufacturing, Inc. (Comp)	Hallam, PA	02/13/07	02/02/07
60956	Becky's of Asheboro, Inc. (Wkrs)	Asheboro, NC	02/13/07	02/09/07
60957	Douglas Quikut (State)	Walnut Ridge, AR	02/13/07	02/12/07
60958	Sekely Industries (Wkrs)	Salem, OH	02/13/07	02/09/07
60959	Mundy's Lumber and Veneer (Wkrs)	Murphy, NC	02/13/07	02/12/07
60960	Flynn Enterprises, LLC (State)	Hopkinsville, KY	02/15/07	02/09/07
60961	Vytech Industries Inc. (Wkrs)	Anderson, SC	02/15/07	02/09/07
60962	Mitchel Manufacturing (Div. of Quaker Lace) (Wkrs)	Honea Path, SC	02/15/07	02/06/07
60963	American Greetings (Plus Mark) (Wkrs)	Afton, TN	02/15/07	02/12/07
60964	Federal Mogul (Comp)	St. Louis, MO	02/15/07	02/13/07
60965	Eaton Aviation Corporation dba Eaton Aerospace (Comp)	Aurora, CO	02/15/07	02/13/07
60966	Vishay Intertechnology—Vitramon (State)	Monroe, CT	02/16/07	02/15/07
60967	Masco Corporation of Indiana (Delta Faucet Company) (Comp).	Greensburg, IN	02/16/07	02/05/07
60968	Deluxe Video Services Inc. (State)	N. Little Rock, AR	02/16/07	02/14/07
60969	RM International Inc. (State)	Portland, OR	02/16/07	02/12/07
60970	TDS/US Automotive (Comp)	Chesapeake, VA	02/16/07	01/19/07
60971	PHD USA Advertising, LLC (Wkrs)	Troy, MI	02/16/07	02/06/07
60972	Parlex Polymer Flexible Circuits (Comp)	Cranston, RI	02/16/07	02/15/07
60973	Collins and Aikman (State)	Oklahoma City, OK	02/16/07	01/13/07
60974	Cadence Innovation (Wkrs)	Fraser, MI	02/16/07	01/19/07
60975	Elliss Technologies LLC (Comp)	Sterling Heights, MI	02/16/07	02/14/07
60976	Federal Mogul Inc./Global Distribution & Logistics (Comp)	Berkeley, MO	02/16/07	02/13/07
60977	Ward Manufacturing, Inc. (Comp)	Blossburg, PA	02/16/07	02/14/07

[FR Doc. E7–3457 Filed 2–27–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,089]

Jones Apparel Group, Inc., Bristol Production Department; Bristol, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Jones Apparel Group, Inc., Bristol Production Department, Bristol, Pennsylvania. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–60,089; Jones Apparel Group, Bristol Production Department, Bristol, Pennsylvania (February 20, 2007).

Signed at Washington, DC, this 21st day of February 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–3459 Filed 2–27–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,847]

Mid-West Wire Products Incorporated; Ferndale, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 29, 2007 in response to a petition filed by a company official on behalf of workers at Mid-West Wire Products Incorporated, Ferndale, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 21st day of February 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–3462 Filed 2–27–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Renewal of the Advisory Committee on Apprenticeship (ACA) Charter

AGENCY: Employment and Training Administration, Labor.

ACTION: Renewal of the Advisory Committee on Apprenticeship (ACA) Charter.

SUMMARY: Notice is hereby given that after consultation with the General Services Administration, it has been determined that the renewal of a national advisory committee on apprenticeship is necessary and in the public interest. Accordingly, the U.S. Department of Labor, Employment and Training Administration has renewed the Advisory Committee on Apprenticeship (ACA) Charter with several minor revisions. The revisions are not intended to change the purpose or the Committee's original intent. The revisions are intended as a routine updating to align with the Department's strategic goals and existing procedures.

SUPPLEMENTARY INFORMATION:

Background

The current ACA charter expires March 2, 2007. The ACA's charter is required to be renewed every two years from the date of the Secretary of Labor's signature. During the renewal process several revisions were made to align the charter with the Department's strategic goals and existing procedures. These proposed revisions were not intended to change the purpose or the Committee's original intent. The revisions were intended as a routine updating to align with the Department's goals and procedures. The revisions are found in the following five sections of the charter: Objectives and the Scope, Membership, official name change for the Office of Apprenticeship, Panel of Experts, and the Annual Operating Cost.

Summary of Revisions

- The objectives were slightly modified to ensure that they are aligned with the Department's Strategic Goals.
- The membership was altered slightly to make official the long standing practice of inviting the current President of the National Association of State and Territorial Apprenticeship Directors (NASTAD) and the National Association of Government Labor Officials (NAGLO) to represent his or her respective organization on the Committee.
- All appropriate entries were modified to reflect the name change from the Office of Apprenticeship Training, Employer and Labor Services (OATELS) to the Office of Apprenticeship (OA).
- The current ACA recommended the U.S. Department of Agriculture be added to the Panel of Experts. The charter states that the Secretary can establish a non-voting Panel of Experts consisting of representatives from a variety of Departments to assist the Committee in carrying out its responsibilities.
- The budget was increased from $220,000 to $250,000 to accommodate the cost of providing logistical and conference support for the annual ACA meetings, and key regulatory workgroup meetings.

The ACA provides advice and recommendations to the Secretary of Labor in four key areas:

(1) In the development and implementation of policies, legislation and regulations affecting the National Apprenticeship System;

(2) On the preparation of the American workforce for sustained employment through employment and training programs for new and incumbent workers, as well as quality economic and labor market information;

(3) On measures that will foster quality work places that are safe, healthy, and fair;

(4) On strategies to meet the competitive labor demands of a global economy, as well as the development of workforce systems that assist workers and employers in meeting the challenges of global competition.

The Committee is composed of approximately 30 individuals appointed by the Secretary. The membership of the Committee shall include equal representation of employers, labor organizations, and the public sectors. NASTAD and NAGLO will both be represented by their current President on the public group of the Committee. Since the term for the NASTAD and the NAGLO presidency may not coincide with the ACA's two-year term, as the presidency changes, so will the representatives from these respective organizations. The Secretary shall appoint one of the public members as Chairperson to the Committee. A representative of the U.S. Department of Education and the U.S. Department of Commerce will be invited to serve as non-voting members of the Committee ex-officio. The Assistant Secretary for Employment and Training shall be a member ex-officio. The Administrator of the Office of Apprenticeship shall be the designated Federal official to the Committee.

Terms of members shall be 1 or 2-years, as designated by the Secretary, provided that all Committee members shall serve at the pleasure of the Secretary. Appointments to vacancies occurring during the terms of such appointments shall be for the un-expired portions of the terms. The expiration date for the 2-year terms shall coincide with the termination of the charter, and the 1-year terms shall expire one month prior to the termination of the charter.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Swoope, Administrator, Office of Apprenticeship, Employment and Training Administration, U.S. Department of Labor, Room N–5311, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–2796, (this is not a toll-free number).

Signed at Washington, DC, this 22nd day of February, 2007.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. E7–3465 Filed 2–27–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0041]

Southwest Research Institute; Renewal and Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's final decision renewing and expanding the recognition of Southwest Research Institute (SWRI) as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

DATES: The renewal and expansion of recognition become effective on February 28, 2007.

FOR FURTHER INFORMATION CONTACT: MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S.

Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the renewal and expansion of recognition of Southwest Research Institute (SWRI) as a Nationally Recognized Testing Laboratory (NRTL). SWRI's expansion covers the use of an additional test standard, while the SWRI renewal covers its existing scope of recognition. OSHA's current scope of recognition for SWRI may be found in the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/swri.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational Web page for each NRTL that details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

SWRI initially received OSHA recognition as an NRTL on July 13, 1993 (58 FR 37752), for a five-year period ending on July 13, 1998. Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. NRTLs submitting requests within this allotted time period retain their recognition during OSHA's renewal process. SWRI submitted the required application and received its first renewal of recognition on March 9, 1999 (64 FR 11503), for the five-year period ending March 9, 2004. SWRI then submitted a request dated June 4, 2003 (see Exhibit 14), to renew its recognition again. This request fell within the allotted time period, and SWRI retained its recognition pending OSHA's final decision in the renewal process.

In its June 4, 2003, application, the NRTL included an earlier request to expand its recognition to include three additional test standards, but then eliminated two of these standards from its request. The NRTL Program staff determined that the remaining standard is an ''appropriate test standard'' within the meaning of 29 CFR 1910.7(c). Therefore, OSHA is approving this one additional test standard for the expansion. For the renewal, the Agency is approving the 11 test standards currently in SWRI's scope. In connection with the renewal, NRTL Program staff assessed the NRTL's facilities in April 2005 and recommended renewal of the SWRI recognition in a memo dated August 31, 2005 (see Exhibit 14–1). The assessor had previously recommended approval of the additional standard (also see Exhibit 14–1), but the expansion was deferred pending SWRI's decision regarding the two standards it eliminated.

The preliminary notice announcing the renewal/expansion application was published in the **Federal Register** on October 6, 2006 (71 FR 59133). Comments were requested by October 23, 2006, but no comments were received in response to this notice. OSHA is now proceeding with this final notice to grant SWRI's renewal/expansion application.

The most recent application processed by OSHA specifically related to SWRI's recognition granted an expansion, and the final notice for this expansion was published on November 22, 2000 (65 FR 70366). OSHA, however, issued a notice modifying the scope of a number of NRTLs to replace or delete withdrawn test standards (70 FR 11273, March 8, 2005). SWRI was one of those NRTLs.

You may obtain or review copies of all public documents pertaining to the SWRI application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC, 20210. Docket No. OSHA–2006–0041 (formerly, NRTL3–90) contains all materials in the record concerning SWRI's recognition.

The current address of the SWRI facility already recognized by OSHA is: Southwest Research Institute, 6220 Culebra Road, Post Office Drawer 28510, San Antonio, TX 78228.

Final Decision and Order

NRTL Program staff has examined the application, the assessor's recommendations, and other pertinent information. Based upon this examination and the assessor's recommendations, OSHA finds that SWRI has met the requirements of 29 CFR 1910.7 for renewal and expansion of its recognition, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews and expands the recognition of SWRI, subject to these limitations and conditions.

Limitations

1. Test Standards and Site

OSHA limits the renewal of SWRI's recognition to the one site listed above and to testing and certification of products for demonstration of conformance to the following test standards, each of which OSHA has determined is an appropriate test standard, within the meaning of 29 CFR 1910.7(c):

ASTM E2074	Standard Method for Fire Tests of Door Assemblies.
UL 10A	Tin-Clad Fire Doors.
UL 10B	Fire Tests of Door Assemblies.
UL 94	Tests for Flammability of Plastic Materials for Parts in Devices and Appliances.
UL 155	Tests of Fire Resistance of Vault and File Room Doors.
UL 162	Foam Equipment and Liquid Concentrates.
UL 555	Fire Dampers.
UL 711	Rating and Fire Testing of Fire Extinguishers.
UL 1887	Fire Test of Plastic Sprinkler Pipe for Visible Flame and Smoke Characteristics.
UL 2085	Protected Aboveground Tanks for Flammable and Combustible Liquids.
UL 60950	Information Technology Equipment.

Additionally, OSHA limits the expansion of SWRI's recognition to testing and certification of products for demonstration of conformance to the following test standard, which also is an appropriate test standard, as previously noted: UL 525 Flame Arresters.

The designations and titles of all of the above test standards were current at the time of the preparation of the preliminary notice.

OSHA's recognition of SWRI, or any NRTL, for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any product(s) for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product(s).

Many UL test standards are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

2. Supplemental Programs

The renewal is also limited to continued use by SWRI of the following supplemental programs, all of which are currently in its scope:

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

In developing these programs, OSHA responded to industry requests and allowed certain of their ongoing practices to continue but in a manner controlled by OSHA criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Conditions

SWRI must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to SWRI's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If SWRI has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

SWRI must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, SWRI agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

SWRI must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

SWRI will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

SWRI will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 21st day of February, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. E7–3440 Filed 2–27–07; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

National Foundation for the Arts and the Humanities

National Endowment for the Arts; National Council on the Arts 160th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on March 22 and March 23, 2007 in Rooms 527 and M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

The Council will meet in closed session on March 22nd, from 12 p.m. to 2 p.m., in Room 527 for discussion of National Medal of Arts nominations. In accordance with the determination of the Chairman of February 16, 2007, this session will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

The March 23rd meeting, from 9 a.m. to 11:45 a.m. (ending time is approximate), will be open to the public on a space available basis. Opening remarks and announcements will include introduction of new Council members and viewing of a clip from the *Operation Homecoming* film. This will be followed by an update on Congressional/White House activities. The meeting will include two presentations: One on 40 years of NEA support for Theater and Musical Theater and one on Artist Communities, highlighting the MacDowell Colony and including guest speakers and a performance (participants not yet determined). This will be followed by review and voting on applications and guidelines. The meeting will conclude with general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: February 22, 2007.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. E7–3413 Filed 2–27–07; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Federal Advisory Committee on International Exhibitions

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions will be held by teleconference on March 13, 2007 from the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. The meeting, for the purpose of application review, will take place from 3 p.m.–4:30 p.m. (ending time is approximate), and will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 16, 2007, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: February 21, 2007.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E7–3410 Filed 2–27–07; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Determination of the Chairperson of the National Endowment for the Arts as to Certain Advisory Committees: Public Disclosure of Information and Activities

The National Endowment for the Arts utilizes advice and recommendations of advisory committees in carrying out many of its functions and activities.

The Federal Advisory Committee Act, as amended (Pub. L. 92–463), governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise and assist the Federal Government. Section 10 of the Act specifies that department and agency heads shall make adequate provisions for participation by the public in the activities of advisory committees, except to the extent a determination is made in writing by the department or agency head that a portion of an advisory committee meeting may be closed to the public in accordance with subsection (c) of section 552b of Title 5, United States Code (the Government in the Sunshine Act).

It is the policy of the National Endowment for the Arts to make the fullest possible disclosure of records to the public, limited only by obligations of confidentiality and administrative necessity. Consistent with this policy, meetings of the following Endowment advisory committees will be open to the public except for portions dealing with the review, discussion, evaluation, and/or ranking of grant applications: Arts Advisory Panel and the Federal Advisory Committee on International Exhibitions.

The portions of the meetings involving the review, discussion, evaluation and ranking of grant applications may be closed to the public for the following reasons:

The Endowment Advisory Committees listed above review and discuss applications for financial assistance. While the majority of applications received by the agency are submitted by organizations, all of the applications contain the names of and personal information relating to individuals who will be working on the proposed project. In reviewing the applications, committee members discuss the abilities of the listed individuals in their fields, the reputations of the listed individuals among their colleagues, the ability of the listed individuals to carry through on projects they start, and their background and performance. Consideration of these matters is essential to the review of the artistic excellence and artistic merit of an application.

Consequently, in the interest of meeting our obligation to consider artistic excellence and artistic merit when reviewing applications for financial assistance:

It is hereby determined in accordance with the provisions of section 10(d) of the Act that the disclosure of information regarding the review, discussion, and evaluation of applications for financial assistance as outlined herein is likely to disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Therefore, in light of the above, I have determined that the above referenced meetings or portions thereof, devoted to review, discussion, evaluation, and/or ranking of applications for financial assistance may be closed to the public in accordance with subsection (c)(6) of section 552b of Title 5, United States Code.

The staff of each committee shall prepare a summary of any meeting or portion not open to the public within three (3) business days following the conclusion of the meeting of the National Council on the Arts considering applications recommended by such committees. The summaries shall be consistent with the considerations that justified the closing of the meetings.

All other portions of the meetings of these advisory committees shall be open to the public unless the Chairperson of the National Endowment for the Arts or a designee determines otherwise in accordance with section 10(d) of the Act.

The Panel Coordinator shall be responsible for publication in the **Federal Register** or, as appropriate, in local media, of a notice of all advisory committee meetings. Such notice shall be published in advance of the meetings and contain:

1. Name of the committee and its purposes;

2. Date and time of the meeting, and, if the meeting is open to the public, its location and agenda; and

3. A statement that the meeting is open to the public, or, if the meeting or any portion thereof is not to be open to the public, a statement to that effect.

The Panel Coordinator is designated as the person from whom lists of committee members may be obtained and from whom minutes of open meetings or open portions thereof may be requested.

Guidelines

Any interested person may attend meetings of advisory committees that are open to the public.

Members of the public attending a meeting will be permitted to participate in the committee's discussion at the discretion of the chairperson of the committee, if the chairperson is a full-time Federal employee; if the chairperson is not a full-time Federal employee then public participation will be permitted at the chairperson's discretion with the approval of the full-time Federal employee in attendance at the meeting in compliance with the order.

Dated: February 21, 2007.

Kathy Plowitz-Worden,

Committee Management Officer.

[FR Doc. E7–3412 Filed 2–27–07; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Determination of the Chairperson of the National Endowment for the Arts Regarding Potential Closure of Portions of Meetings of the National Council on the Arts

Section 6(f) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*) authorizes the National Council on the Arts to review applications for financial assistance to the National Endowment for the Arts and make recommendations to the Chairperson.

The Federal Advisory Committee Act (FACA), as amended (Pub. L. 92–463) governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise the Federal Government. Section 10 of that Act directs meetings of advisory committees to be open to the public, except where the head of the agency to which the advisory committee reports determines in writing that a portion of a meeting may be closed to the public consistent with subsection (c) of section 552b of Title 5, United States Code (the Government in the Sunshine Act.)

It is the policy of the National Endowment for the Arts that meetings of the National Council on the Arts be conducted in open session including those parts during which applications are reviewed. However, in recognition that the Endowment is required to consider the artistic excellence and artistic merit of applications for financial assistance and that consideration of individual applications may require a discussion of matters such as an individual artist's abilities, reputation among colleagues, or professional background and performance, I have determined to reserve the right to close limited portions of Council meetings if such information is to be discussed. The purpose of the closure is to protect information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. Closure for this purpose is authorized by subsection (c)(6) of section 552b of Title 5, United States Code.

Additionally, the Council will consider prospective nominees for the National Medal of Arts award in order to advise the President of the United States in his final selection of National Medal of Arts recipients. During these sessions, similar information of a personal nature will be discussed. As with applications for financial assistance, disclosure of this information about individuals who are under consideration for the award would constitute a clearly unwarranted invasion of personal privacy.

Therefore, in light of the above, I have determined that those portions of Council meetings devoted to consideration of prospective nominees for the National Medal of Arts award may be closed to the public. Closure for these purposes is authorized by subsections (c)(6) of section 552b of Title 5, United States Code. A record shall be maintained of any closed portion of the Council meeting. Further, in accordance with the FACA, a notice of any intent to close any portion of the Council meeting will be published in the **Federal Register**.

Dated: February 16, 2007.

Dana Gioia,

Chairman, National Endowment for the Arts.

Dated: February 21, 2007.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E7–3411 Filed 2–27–07; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266, 50–301, and 72–5]

Nuclear Management Company, LLC; Wisconsin Electric Power Company Point Beach Nuclear Plant, Unit Nos. 1 and 2, and Independent Spent Fuel Storage Installation; Notice of Consideration of Approval of Transfer of Renewed Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the direct transfer of the Renewed Facility Operating Licenses, which are numbered DPR–24 and DPR–27, for the Point Beach Nuclear Plant, Unit Nos. 1 and 2 (Point Beach), currently held by Wisconsin Electric Power Company (WEPCO), as owner, and Nuclear Management Company, LLC (NMC), as operating authority, of Point Beach. The transfer would be to FPL Energy Point Beach, LLC (FPLE Point Beach). WEPCO and NMC are also seeking, as an option, approval to transfer the operating authority for Point Beach from NMC to FPLE Point Beach prior to the closing for the transfer of ownership. The Commission is considering amending the licenses for administrative purposes to reflect the proposed transfers.

According to an application for approval dated January 26, 2007, and filed by WEPCO and NMC, FPLE Point Beach would acquire ownership of the facility following approval of the proposed transfer of licenses, and would be responsible for the operation and maintenance of Point Beach. FPLE Point Beach will also take title to the general license for the independent spent fuel storage installation. In addition, WEPCO and FPLE Point Beach have signed an Interim Operating Agreement that would permit WEPCO, at its option, and upon receipt of applicable regulatory approvals, to transfer operating authority to FPLE Point Beach prior to the closing for the ownership transfer. In a separate letter from FPLE Point Beach dated January 26, 2007, FPLE Point Beach provided the proprietary versions of several enclosures to the application from NMC and WEPCO that include proprietary financial information to support the application.

No physical changes to the Point Beach facility or operational changes are being proposed in the application.

The proposed amendments would replace references to WEPCO and NMC in the licenses with references to FPLE Point Beach, to reflect the proposed transfer.

Pursuant to 10 CFR 50.80 and 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the

license of a utilization facility, which does no more than conform the licenses to reflect the transfer action, involves no significant hazards consideration and no genuine issue as to whether the health and safety of the public will be significantly affected. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(I)-(viii).

Requests for a hearing and petitions for leave to intervene should be served upon Arthur H. Domby, Troutman Sanders LLP, 600 Peachtree Street, Atlanta, GA 30308, *telephone:* 404–885–3130, *facsimile:* 404–962–6546, *e-mail: arthur.domby@troutmansanders.com*; Jonathan Rogoff, Vice President, General Counsel and Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016, *telephone:* 715–377–3316, *facsimile:* 715–386–1013, *e-mail: jonathan.rogoff@nmcco.com*; Mitchell S. Ross, Associate General Counsel, FPL Energy Point Beach, LLC, 700 Universe Blvd., Juno Beach, Florida 33408, *telephone:* 561–691–7126, *facsimile:* 561–691–7135, *e-mail: mitch_ross@fpl.com*; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated January 26, 2007, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agency wide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. 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 to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 22nd day of February 2007.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–3474 Filed 2–27–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–259, 50–260, and 50–296]

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Appendix R, for Facility Operating License Nos. DPR–33, DPR–52, and DPR–68, issued to the Tennessee Valley Authority (TVA, the licensee), for operation of the Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, located in Limestone County, Alabama. Therefore, as required by 10 CFR 50.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow intervening combustibles such as the 480V Reactor Building Vent Boards 1B, 2B, and 3B; small panels in Units 1, 2 and 3; and the 1-hour fire rated fire wrap (Thermo-lag) material in the 20-foot separation zones identified.

The proposed action is in accordance with the licensee's application dated October 26, 2006, as supplemented by a letter dated January 11, 2007.

The Need for the Proposed Action

Section III.G of Appendix R to 10 CFR Part 50 is related to fire protection features to ensure that components of redundant trains of equipment, including cables and circuits, to achieve and maintain safe-shutdown are free of fire damage. Either the fire protection configurations must meet the specific requirements of Section III.G or an alternative fire protection configuration must be justified by a fire hazard analysis.

During the September 2006 NRC audit of the Unit 1 Fire Protection Program, it was identified that 20-foot separation zones included intervening combustibles that were not specifically addressed in an approved exemption by the NRC dated October 21, 1988. TVA

has requested this exemption in order to revise the October 1988 exemption to include additional combustibles such as the 480V Reactor Building Vent Boards 1B, 2B, and 3B; small panels in Units 1, 2 and 3; and the one hour fire rated fire wrap (Thermo-lag) material for the 20-foot separation zones identified.

Environmental Impacts of the Proposed Action

The proposed action will not significantly increase the probability or consequences of accidents. The NRC staff has completed its evaluation of the proposed exemption and associated amendment and finds that the calculated total doses remain within the acceptance criteria of 10 CFR 50.67 and General Design Criterion 19, and there is no significant increase in occupational or public radiation exposure. The NRC staff, thus, concludes that granting the proposed exemption would result in no significant radiological environmental impact.

The proposed action does not affect nonradiological plant effluents or historical sites, and has no other environmental impact. Therefore, there are no significant nonradiological impacts associated with the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the ''no action'' alternative). Denial of the exemption would result in no change in current environmental impacts. Thus, the environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the BFN dated September 1, 1972, for Units 1, 2, and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on February 6, 2007, the NRC staff consulted with the Alabama State official, Kirk Whatley of the Office of Radiological Control, 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 Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the purposed action, see the licensee's letter dated October 26, 2006. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. 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 send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 20th day of February 2007.

For the Nuclear Regulatory Commission.

Eva A. Brown,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–3476 Filed 2–27–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Privacy Act of 1974; Systems of Records

AGENCY: U.S. Nuclear Waste Technical Review Board.

ACTION: Notice of modification to two existing systems of records.

SUMMARY: 5 U.S.C. 552a requires that each federal agency review its systems of records containing personal information covered by the Privacy Act of 1974. As a result of its latest review, the Board is amending both of the systems of records that it maintains. A description of these systems was published in November 22, 2006 (71 FR 67654–67655). The Board proposed amending NWTRB–1 and expanding NWTRB–2 to include other information useful to the Board. In the first system, Administrative Files, some categories were overlooked in the previous notice. The Board further proposed expanding the second system, Mailing List, to become the Contact List. The Board determined that the changes to NWTRB–1 were important enough to republish the notice with the changes and that the changes to NWTRB–2 were substantial enough to accept comments on the proposed expansion until January 15, 2007. The Board received no comments on the proposed expansion.

DATES: The changes to NWTRB–2 will become effective on February 28, 2007.

FOR FURTHER INFORMATION CONTACT: Victoria Reich, 703–235–4473.

SUPPLEMENTARY INFORMATION: The Board currently maintains two systems of records , NWTRB–1 and NWTRB–2, that contain information covered by the Privacy Act of 1974. In its review of these systems, the Board has found classes of information that were not included in its previous notice and on November 22, 2006, republished NWTRB–1 with the corrections added. The Board further found that expanding the records in NWTRB–2 would make it more useful and requested comments from the public from November 22, 2006, until January 15, 2007. No comments were received during this period. Accordingly, the Board plans to proceed with the proposed changes on February 28, 2007.

Dated: February 23, 2007.

William D. Barnard,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 07–885 Filed 2–27–07; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Demonstration Project; Pay Banding and Performance-Based Pay Adjustments in the National Nuclear Security Administration

ACTION: Notice of a proposed demonstration project plan.

SUMMARY: Chapter 47 of title 5, United States Code, authorizes the Office of Personnel Management (OPM), directly or in agreement with one or more agencies, to conduct demonstration projects that experiment with new and different human resources management concepts to determine whether changes in human resources policy or procedures would result in improved Federal human resources management. The National Nuclear Security Administration (NNSA) and OPM propose to test a pay banding system in which within-band pay progression is

based on performance. Section 4703 of title 5 requires OPM to publish the proposed project plan in the **Federal Register**. This notice fulfills that requirement. The proposed project plan has been approved by NNSA, the Department of Energy, and OPM.

DATES: Written comments must be submitted on or before March 30, 2007. A public hearing is scheduled for Wednesday, April 4, 2007, from 10 a.m. to 5 p.m., Eastern Standard Time. *The location of the hearing is:* U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Public parking is limited, but the building is conveniently accessible to the ''Smithsonian'' and ''L'Enfant'' Metro stations. The Forrestal Building is a secure facility. Members of the public must show a government-issued photo ID (*e.g.*, State driver's license). Attendees will undergo electronic screening, and their personal belongings will be subject to a physical search. Personal items prohibited in the Forrestal Building include devices that can transmit and record, weapons (guns, knives, explosives, etc.), and alcohol. A member of the public possessing such items will be barred from entering, and such items are subject to confiscation. There will be a sign-in table set up in the main lobby. A greeter, and signs, will direct attendees to the main auditorium location.

There will be a telephone call-in number for members of the public who cannot attend in person. That number will be 202–287–5323, and the line will be active from 10 a.m. to 5 p.m., Eastern Standard Time.

At the time of the hearing, interested persons or organizations may present their written or oral comments on the proposed demonstration project. The hearing will be informal. However, anyone wishing to testify should contact the person listed under **FOR FURTHER INFORMATION CONTACT,** so that NNSA and OPM can plan the hearing and provide sufficient time for all interested persons and organizations to be heard. Priority will be given to those on the schedule, with others speaking in any remaining available time. Each speaker's presentation will be limited to 10 minutes. Written comments may be submitted to supplement oral testimony during the public comment period.

ADDRESSES: Comments may be mailed to Demonstration Projects, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7677, Washington, DC 20415 or submitted by e-mail to *Demoprojects@opm.gov*.

FOR FURTHER INFORMATION CONTACT: National Nuclear Security Administration: Randy Mazzeo, NNSA Assistant HR Director for Policy & Workforce Planning, (301) 903–5192, 19901 Germantown Road, NA–64, Room F–115, Germantown, MD 20874. Office of Personnel Management: Patsy Stevens, Systems Innovation Group Manager, U.S. Office of Personnel Management, (202) 606–1258, 1900 E Street, NW., Room 7456, Washington, DC 20415.

SUPPLEMENTARY INFORMATION: The goals of this demonstration project are to—

(1) Improve hiring by allowing NNSA to compete more effectively for high quality employees through the judicious use of higher entry salaries;

(2) Motivate and retain staff by providing faster pay progression for high-performing employees;

(3) Improve the usefulness and responsiveness of the position classification system to managers;

(4) Increase the proficiency of administering the position classification system through a simplified pay-banded application of the current General Schedule grade structure, and reduce the procedural steps and documentation requirements traditionally associated with classifying positions;

(5) Eliminate automatic pay increases (*i.e.*, annual adjustments that normally take effect the first day of the first pay period beginning on or after January 1) by making pay increases performance-sensitive, so that only Fully Successful (known as ''Fully Meets Expectations'' in NNSA) and higher performers will receive pay adjustments, and the best performers will receive the largest pay adjustments;

(6) Integrate with, build upon, and advance the work of several key human capital management improvement initiatives and projects currently underway in NNSA, including—

a. Advancing the ongoing refinement of NNSA's three-year old enterprise-wide performance management program, which currently features a pilot for automating yearly performance ratings, to the next logical level, encompassing performance-based pay adjustments,

b. Achieving greater parity, though not complete harmony, with NNSA's mature excepted service pay-banded and pay-for-performance system (e.g., will have a lower high-end pay band; no automatic pay increases, etc.),

c. Building on the simplified position description (PD) format and automated PD library that are already in place,

d. Continuing to develop improved performance management skills among first-line supervisors through increased program rigor, additional training, and better guidance materials, to better develop standards that reflect differences in performance,

e. Developing an automated position classification and position control system,

f. Establishing a system of career-enhancing career paths for the purpose of developing, advancing, and retaining employees,

g. Building on the new workforce analysis and planning system, already in place to identify FTE needs and competency needs and skills gaps, to conduct a valid occupational analysis to construct meaningful pay bands,

h. Using a total workforce management approach to controlling costs, not just spending caps and share formulas; i.e., cultivating a managerial culture of accountability in taking and directing personnel actions, fostering judicious yearly employee ratings and prudent performance payouts, and instilling position management discipline.

Office of Personnel Management.

Linda M. Springer,

Director.

Table of Contents

I. Executive Summary
II. Introduction
A. Purposes and Approach
B. Problems With the Present System
C. Changes Required/Expected Benefits
D. Participating Organizations
E. Participating Employees
F. Project Design
III. Personnel System Changes
A. Pay Banding Classification and Pay System
1. Establishment of Career Paths and Pay Bands
2. Position Classification
3. Minimum Qualifications Requirements
4. Elimination of Fixed Steps
5. Rate Range
6. Rate of Basic Pay Upon Initial Appointment
7. Rate of Basic Pay Upon Promotion
8. Rate of Basic Pay in Noncompetitive Lateral Actions
9. Other Pay Administration Provisions
10. Staffing Supplements
B. Performance Appraisal
1. Program Requirements
2. Supervisory Accountability
3. Reconsideration of Ratings
C. Performance-Based Pay Adjustments
1. Pay Pools
2. Performance Shares
3. Pay Adjustments
4. Employees Who Do Not Receive a Pay Adjustment
5. Locality Pay and Staffing Supplement
D. Reduction-in-Force
IV. Training
V. Conversion
A. Conversion to the Demonstration Project

B. Conversion Back to the General Schedule System
VI. Project Duration
VII. Project Evaluation
VIII. Costs
IX. Waiver of Laws and Regulations Required
A. Title 5, United States Code
B. Title 5, Code of Federal Regulations

I. Executive Summary

This project was designed by NNSA in consultation with OPM. The demonstration project will modify the General Schedule classification and pay system by identifying several broad career paths, establishing pay bands which may cover more than one grade in each career path, eliminating longevity-based step progression, and providing for annual pay adjustments based on performance. The proposed project will test (1) the effectiveness of multi-grade pay bands in recruiting, advancing, and retaining employees, and in reducing the processing time and paperwork traditionally associated with classifying positions at multiple grade levels, and (2) the application of meaningful distinctions in levels of performance to the allocation of annual pay increases under the General Schedule.

II. Introduction

A. Purposes and Approach

The purposes of the proposed project are to—

(1) Modify the General Schedule (GS) classification system by establishing pay bands which may cover more than one grade; and

(2) Modify the GS pay system to provide larger annual pay increases to employees who are better performers based on performance distinctions made under a credible, strategically-aligned performance appraisal system/program and thereby improve the results-oriented performance culture within the organization.

NNSA's approach to achieving these purposes is to integrate with and build upon the several ongoing human capital management initiatives and projects that are already underway, and to design a GS pay banding and performance-based pay adjustment system that—

(1) Complements and increases parity with the statutory NNSA excepted service employment system, already in place, and

(2) Profits from the successes, mistakes, and lessons of other agency demonstration projects, past and current.

B. Problems With the Present System

Position Classification Rigidity, Incomprehensibility, and Procedural Excesses

Although the GS classification system is not a compensation system per se, the classification and pay systems are inextricably intertwined. In practice, the GS classification system is the primary determinant of an employee's basic pay. Furthermore, NNSA believes in the principles underlying the GS classification system (i.e., equal pay for substantially equal work, and variations in pay based on the actuality of work performed, rather than on who performs the work) and believes that these principles are as valid and applicable to the Federal civil service system today as when originally enacted into law in 1923, and when the General Schedule was established in 1949. As Ismar Baruch wrote in a classic groundbreaking 1941 report, Position Classification in the Public Service:

> ''* * * the very nature of governmental jurisdictions places them in a position of peculiar responsibility to the public at large. Individual actions without plan or system and based merely upon the expediency of the moment are undesirable. Public personnel policies and transactions affecting positions and employees should be supportable by facts and logic in the light of broad considerations applicable to the service as a whole. Further, in the management of public personnel affairs, considerations of fairness and equity require uniform action under like circumstances, particularly in the establishment of pay rates.''

This in essence is what the Federal position classification system was designed to achieve, and has achieved in principle, if not practice, ever since these words were first written. Thus, rather than ''scrapping'' the current GS classification system and starting over, NNSA believes that modifying the system to accommodate the work and workforce of the 21st century is a more prudent and workable approach.

Pay banding does this. The current GS classification system is cumbersome, labor intensive, and difficult to comprehend. As OPM's April 2002 white paper, A Fresh Start for Federal Pay: The Case for Modernization points out, the GS classification system was designed during the World War II years when civil servants were predominantly ''process-obsessed'' file clerks. Public servants in the middle of the 20th century performed work that tended to be mechanical and repetitive in nature, consisting of job tasks readily observable and measurable. Today, work tends to be knowledge-based and highly specialized, and does not lend itself to easy categorization based on readily observable characteristics. Nonetheless, as an employee progresses from the entry level to the full-performance level in a given occupation today, under the traditional classification system, a separate position description is still required for each grade. For example, an entry level GS–5 Engineer with promotion potential to GS–12 requires five different position descriptions (or statements of differences) covering grade intervals GS–5, GS–7, GS–9, GS–11, and GS–12. Additionally, each position description should be accompanied by a position evaluation report certifying that the duties and responsibilities of the position meet the requirements for classification into the series and grade. Often, the difference between a higher-graded and lower-graded position in the same career progression may be the level of supervision an employee receives, or the increasing gradations in the scope and effect of an employee's work on agency missions and programs, or some other interpretative degree of occupational difficulty and responsibility. As a result, managers who assign work and who are responsible for describing such assignments of work, and the position classifiers who evaluate assignments of work against OPM's and applicable agency classification criteria, often view the practice attendant to the current GS classification system as an exercise in semantics, and PD writing, for the purpose of ''beating the system'' to award the highest grade possible to a position, instead of as a management tool by which to make meaningful and significant distinctions between levels of work.

The current GS classification system also directly impacts the effectiveness of agency recruitment activities. Recruiting for a vacancy which may be filled at any level from the entry level to the full-performance level requires a separate position description for each grade, separate qualifications requirements for each grade, separate applicant assessment and rating tools (often referred to as ''crediting plans'') for each grade, and separate lists of best-qualified candidates (often referred to as ''certificates'') for each grade. For example, recruiting for a single GS–5/12 Engineer vacancy requires five different position descriptions (GS–5, GS–7, GS–9, GS–11, and GS–12) and five different ''crediting plans,'' and will result in the agency issuing multiple ''certificates.'' Thus, Federal managers and applicants for Federal employment often view the

system as cumbersome, time consuming, and unresponsive.

Modifying the current system to supplant sequential grade progression with valid, rational, and credible pay bands will (1) provide much needed management relief from the seeming arbitrariness, rigidity, and document heaviness of the current classification system, (2) provide managers with much needed flexibility, and (3) offer applicants and employees greater opportunities for advancement and inducements to retention, while retaining the public policy principles and management values underlying the current civil service system.

A Need for Performance-Based Pay Increases

Additionally, the current GS pay system provides annual pay increases to all employees, even those whose performance is less than Fully Successful. Similarly, periodic within-grade pay increases are virtually automatic. Although an employee's performance must be determined to be at an ''acceptable level of competence'' in order for the employee to receive a within-grade increase (WGI), this is only a single-level threshold and no further distinctions in levels of performance play a role. All performance levels above the threshold are treated the same for purposes of determining the amount of the increase and the rate at which an employee advances through the rate range of his or her grade. NNSA and OPM do not believe it is a wise use of the limited resources available for the compensation of Federal employees—nor does it serve taxpayers effectively or treat employees fairly—to pass on the same pay adjustments, year after year, to all employees regardless of differences in their performance.

The current GS pay system does provide one limited tool to address distinctions in levels of performance—namely, quality step increases (QSIs). QSIs are discretionary adjustments that are not integrated into the normal pay adjustment process; thus, limited funds are available to provide QSIs, and the decision-making process may not be very transparent. In addition, there is no flexibility as to the amount of the QSI; a full step increase is required. Also, QSIs may be used only for those with the highest rating of record. In summary, QSIs alone cannot be relied upon to establish an effective link between pay and performance based on meaningful distinctions among different levels of performance.

Under these constraints of the GS pay system, agencies are severely limited in their ability to establish a results-oriented performance culture as contemplated under the Human Capital Assessment and Accountability Framework (HCAAF). Within the HCAAF, a results-oriented performance culture effectively plans, monitors, develops, rates, and rewards employee performance, consistent with the merit system principle that ''appropriate incentives and recognition should be provided for excellence in performance'' (5 U.S.C. 2301(b)(3)).

C. Changes Required/Expected Benefits

The proposed demonstration project will respond to the GS classification system problems identified above by compressing the 15 GS grades into multi-grade pay bands. Although this ''compression'' is neither designed nor intended to eliminate the fundamental statutory grading distinctions embedded in the traditional position classification system, it will considerably reduce the excessive rigidity inherent in the current system, making it substantially less cumbersome, less labor intensive, less time consuming, and easier to comprehend and apply. Banding the GS grade structure will also simplify merit promotion activities, by permitting the advancement of employees within given bands without the necessity of advertising promotional opportunities (much like accretion-of-duties procedures under the traditional system), and without the need for handling employee applications in accordance with publicized merit promotion procedures. Because a pay banding system uses broader work levels, the system can be viewed as having more of a rank-in-person emphasis; that is, it permits a more direct relationship between an incumbent's actual (or anticipated) individual level of job performance and a given position's particular level of pay.

The proposed demonstration project will respond to the pay problem identified above by eliminating fixed steps within each of the pay bands and by making annual GS pay adjustments performance-sensitive. Pay adjustments will be funded from a pay pool consisting of the amounts that would otherwise be used to pay the annual GS pay adjustment, WGIs, and QSIs to employees covered by the demonstration project. The pay pool also may include funds saved through the elimination of promotion increases for promotions between grades that are consolidated into the same band. A share mechanism will be used to allocate pay increases among employees with different levels of performance, and managers will be expected to control costs (and will be held accountable for doing so in their own performance plans). Implementation of the proposed pay system will result in larger pay increases going to employees who demonstrate higher performance. By regularly rewarding better performance with better pay, participating organizations will strengthen their results-oriented performance cultures. Among other things, they will be better able to retain their good performers and recruit new ones.

D. Participating Organizations

It is expected that every major headquarters and field organization in NNSA will participate. This includes HQ, program, and support components, including NNSA's cadre of nuclear materials couriers, who are deployed at various locations in the United States, eight geographically dispersed Site Offices and two special purpose Naval Reactors Offices (in Pittsburgh, PA, and Schenectady, NY), and the Service Center in Albuquerque, NM. Each of these units is committed to operating a credible, robust performance appraisal program aligned to the organization's strategic goals and objectives, by providing the necessary training and resources. These organizations have demonstrated this commitment the past three years, as NNSA implemented a comprehensive performance management program enterprise-wide.

E. Participating Employees

The demonstration project will cover all GS non-bargaining unit employees in the participating organizations identified in the preceding paragraph. (The only bargaining unit in NNSA is at headquarters, and currently includes 20 positions.) Included in the coverage are Schedule A and B Excepted Service employees. Not included are Schedule C Excepted Service employees and Excepted Service employees authorized under the NNSA Act, National Defense Authorization Acts, and the DOE Organization Act. Table 1 shows the number of employees currently available and subject to coverage under this project by occupational series and grade.

TABLE 1.—COVERED EMPLOYEES BY OCCUPATIONAL SERIES AND GRADE

Count—OCC Series	Pay Plan GS Grade															GS total
	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	
00018											1	2	7	4		14
00028											1	1	3	2	2	9
00080							1		5		3	29	39	35	16	128
00084								57	51	62	59	58	21			308
00086						2	2	1								5
00130									1		2	8	18	34	45	108
00132													3	1		4
00201											3	12	16	6	8	45
00203							7	2								9
00260												1	3	1		5
00301									20		41	42	51	33	26	213
00303	3	3	9	10	3	12	23	6								69
00318					4	13	9	6	5							37
00326	1	1	4	3		1										10
00335						1										1
00340														1	20	21
00341														2	1	3
00342												2				2
00343							1		4		9	20	41	44	25	144
00344								2								2
00346												2	5	1		8
00361								1								1
00391													1			1
00399			1													1
00401														2		2
00501											3		5	2	3	13
00505															3	3
00510											3	10	26	10	3	52
00511												6		1		7
00525						1		1								2
00560							1		2		1	9	15	16	8	52
00561							1									1
00610									2	1						3
00671													1			1
00690													3	4		7
00801											3	4	34	104	83	228
00802									2				1			3
00803														2		2
00804														2		2
00810									1			1	1			3
00819													4	2		6
00830									1							1
00840									1		1	3	13	17	41	76
00850													1			1
00854												4	2	2	1	9
00905											1	2		9	12	24
00950											3					3
00986								1								1
00999							2									2
01001												1				1
01035												2		5	1	8
01101							1		1			1	3	5	1	12
01102									2		1	12	26	34	12	87
01103									1		2	3	2	2		10
01105							1		2							3
01106							1									1
01150													1			1
01170									1				2	1	1	5
01176													1			1
01222													1	3	1	5
01301												1	13	37	27	78
01306													2	3		5
01310														1	3	4
01412													1			1
01515														1		1
01712											6	6	10	4		26
01750													1			1
01910											1	9	4	1	1	16
02003														2		2
02005					1											1

TABLE 1.—COVERED EMPLOYEES BY OCCUPATIONAL SERIES AND GRADE—Continued

Count—OCC Series	Pay Plan GS Grade															GS total
	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	
02010	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	1	.....	2
02101	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	2	15	6	24
02130	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	9	1	.....	11
02210	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	1	6	18	14	3	44
Grand total	4	4	14	13	8	30	50	77	104	63	145	260	410	467	353	2002

Management has provided initial notice to affected employees and will continue consultation throughout project implementation.

F. Project Design

The project is designed to (1) fundamentally simplify the position classification system as the key to improving recruitment, retention, and classification activities, (2) ensure that no participating employee with a rating of record of less than Fully Meets Expectations will receive a pay increase, and (3) ensure that funds available for pay adjustments will be allocated on the basis of performance, the better performers receiving the greater performance payouts.

To ensure expeditious and effective project implementation and completion, NNSA will model, to the extent feasible and appropriate, programmatic features and operating systems and procedures relating to NNSA's own pay-banded, pay-for-performance excepted service system; in addition, NNSA will review the successes, mistakes, and lessons from the experiences of other agency demonstration projects, notably the current Department of Defense (DoD) laboratory projects, which are based on the foundational China Lake project; the National Institute of Standards and Technology permanent Alternative Personnel System; and DoD's new National Security Personnel System (one of the participating Air Force labs shares Kirtland AFB with NNSA).

Several design principles will underpin this project:

• NNSA will not establish its own classification standards, but rather, will construct band thresholds and boundaries consistent with OPM's official classification criteria; at the same time, NNSA will streamline documentation requirements, including by eliminating Factor Evaluation System formatted PDs, with greater reliance on the Primary Standard to set band parameters.

• NNSA will not delegate classification authority to managers. NNSA understands that not delegating classification authority runs counter to the experiences of other agency demonstration projects. Nonetheless, it is much more efficient to leave the exercise of this authority and all attendant administration activities in the trained hands of the resident human resources (HR) staff. NNSA sees little value in turning managers into classifiers, but rather, believes the value is in preparing managers to become better supervisors. NNSA's pre-eminent managerial goal is to develop a seasoned cadre of Federal managers who can practice the art of supervision at an uncommonly high level (*i.e.*, the supervisor who is more mentor than taskmaster, who can nurture subordinates and unleash their potential for superior performance through the instruments of performance appraisal and reward programs).

• NNSA will use the career paths derived from this demonstration project to underwrite our new concept of a Management Needs-Based Career Path Model to Employee Development and Career Planning. This concept envisions the use of career paths to acquire well-qualified candidates from the current workforce to satisfy new and emerging mission needs. It will use such traditional mechanisms as in-service placement, reassignment, retraining, enrollment in formal development programs, and mixtures of competitive and noncompetitive procedures, to prepare employees to move within and across career paths in response to new and emerging job requirements.

• NNSA will design this demonstration project as a direct complement to and manifestation of the Administrator's strong desire to create NNSA as an employer of choice in the Federal Government. The demonstration project will give real definition, direction, and impetus to the Administrator's concept, which centers on the first-line supervisor as the primary agent in developing a management culture that attracts, develops, and retains a diverse and talented workforce.

III. Personnel System Changes

The 15-grade GS position classification system established under 5 U.S.C. chapter 51 and the GS pay system established under 5 U.S.C. chapter 53, subchapter III, will be modified as described in the following sections. Except as otherwise provided in this plan, demonstration project employees will be considered to be GS employees in applying other laws, regulations, and policies. NNSA does not currently have employees covered by law enforcement officer (LEO) special base rates. Should any law enforcement officers be covered by this demonstration project in the future, they will not be considered to be General Schedule employees for the purposes of applying LEO special base rates authorized by section 403 of the Federal Employees Pay Comparability Act of 1990; a separate career path would be established for these employees, and band ranges for any such LEOs will take LEO special base rates into account.

A. Pay Banding Classification and Pay System

1. Establishment of Career Paths and Pay Bands

NNSA may establish, and adjust over time, career paths that group one or more occupational categories together and provide a common banding structure (*i.e.*, set of work levels and rate ranges) for occupations within a given career path. Initially, NNSA intends to establish four career paths as follows:

(1) *Professional, Engineering and Scientific:* Research, policy, staff, and managerial positions in science, engineering, computing, mathematics and other positions the duties of which include the performance of professional work. Examples of occupational series in this career path are 510—Accountant, 801—General Engineer, 840—Nuclear Engineer, 905—Attorney, 1102—Contract Specialist, 1301—Physical Scientist, and similar traditional two-grade interval GS occupations whose qualifications requirements include a minimum education requirement.

(2) *Administrative:* Specialist positions in such fields as finance, human resources, public affairs, technical information, and management analysis. Examples of occupational series in this career path are 080—Security Specialist, 201—Human Resources Specialist, 340—Program Manager, 341—Administrative Officer, 343—Management/Program Analyst, 560—Budget Analyst, 1035—Public Affairs Specialist, 2101—Transportation Specialist, and similar traditional two-grade interval GS occupations whose qualifications requirements do not include a minimum education requirement.

(3) *Technician and Administrative Support:* Engineering Technician, clerical, assistant, secretarial, and other support positions not fitting the definitions of any other career path. Examples of occupational series in this career path are 203—Human Resources Clerk and Assistant, 303—General Clerk, 318—Secretary, 525—Accounting Technician, 802—Engineering Technician, 1106—Procurement Clerk/Assistant, and similar traditional one-grade interval technician and administrative support occupations not fitting the definitions of any other career path.

(4) *Nuclear Materials Couriers:* NNSA employs approximately 400 Nuclear Materials Couriers, GS–084, who have a unique set of duties and skills, supporting a separate career path, and who have an unusual single-grade interval pattern from GS–8 through GS–13. All positions in the 084 occupational series are encompassed in this career path. Positions of employees who work in the same organizations, doing related work, but that are not classified in the 084 job series, will be allocated to one of the other three career paths, as appropriate to the nature of the work performed.

Each career path will be subdivided into pay bands. Each pay band will correspond to one or more GS grades. NNSA may establish, and adjust over time, a career path's pay band structure. Initially, the pay bands within each career path and their relationship to GS grades will be as follows:

(1) Professional, Engineering and Scientific Career Path

(a) Pay Band I—(GS–5 through GS–7)
(b) Pay Band II—(GS–9 through GS–12)
(c) Pay Band III—(GS–13 through GS–14)
(d) Pay Band IV—(GS–15)

(2) Administrative Career Path

(a) Pay Band I—(GS–5 through GS–8)
(b) Pay Band II—(GS–9 through GS–12)
(c) Pay Band III—(GS–13)
(d) Pay Band IV—(GS–14)
(e) Pay Band V—(GS–15)

Positions in the Professional, Engineering and Scientific and Administrative career paths will normally be filled at Pay Band II or higher. Pay Band I for the Professional, Engineering, and Scientific and Administrative career paths is used primarily, but not exclusively, for basic entry-level appointments, upward mobility, and Student Career Employment Program appointees.

(3) Technician and Administrative Support Career Path

(a) Pay Band I—(GS–1 through GS–4)
(b) Pay Band II—(GS–5 through GS–8)
(c) Pay Band III—(GS–9)

(4) Nuclear Materials Courier Career Path

(a) Pay Band I—(GS–8 through GS–11)
(b) Pay Band II—(GS–12) (''Convoy Commander'' positions only)
(c) Pay Band III—(GS–13) (''Unit Commander'' positions only)

NNSA will coordinate changes in career paths or pay banding structures with OPM. After coordination with OPM, NNSA will give affected employees advance notice and an opportunity to comment before effecting a change with respect to career paths or banding structure.

2. Position Classification

Application of the 15-grade GS position classification system established under 5 U.S.C. chapter 51 will be simplified by allowing a position to be assigned to a specific pay band if the duties and responsibilities of the position meet (or exceed) the requirements for classification into the lowest grade included in that specific pay band. For example, an 801, Engineer, position assigned to Pay Band 1 (GS–5 through GS–7), need only meet the requirements for classification at the GS–5 level. Position descriptions will include examples of higher-level duties and responsibilities to which employees are fully intended to progress. NNSA will establish pay band boundaries consistent with OPM's existing position classification standards, grade-evaluation criteria, and grading practices.

3. Minimum Qualifications Requirements

Application of the OPM Operating Manual: Qualification Standards for General Schedule Positions is simplified by allowing a candidate to qualify for a specific pay band if the candidate meets (or exceeds) the requirements for the lowest grade included in that specific pay band. For example, a candidate for an 801 Engineer position assigned to Pay Band 1 (GS–5 through GS–7), need only meet the qualifications requirements for a GS–801 Engineer position at the GS–5 level.

For NNSA demonstration project employees and employees of other Federal agencies who are in sufficiently similar pay banding systems, the common OPM requirement of one year of experience ''at the next lower grade in the normal line of progression for the occupation'' is changed to ''at the next lower pay band in the normal line of progression for the occupation.''

Federal employees in the General Schedule pay system, Federal employees in other pay systems comparable to the General Schedule, and non-Federal applicants must meet the common OPM requirement of one year of experience ''at the next lower grade in the normal line of progression for the occupation.''

4. Elimination of Fixed Steps

The 10 fixed steps of each GS grade will not apply to employees participating in the demonstration project. The fixed-step system was designed to reward longevity. A pay banding system is an important element of any effort to make pay more performance-sensitive. No employee will lose pay as a result of becoming covered by the demonstration project. However, demonstration project employees will no longer receive longevity-based within-grade pay increases at prescribed intervals. Instead, they will be granted annual performance adjustments as described in section C below.

5. Rate Range

The normal minimum and maximum rates of the rate range for each pay band will equal the applicable step 1 rate and step 10 rate, respectively, for the lowest and highest grades, respectively, in the General Schedule that are included in the pay band. The minimum rate of the pay band is extended 5 percent below the normal minimum for employees with a rating of record below Fully Meets Expectations. Such an employee's rate may fall below the normal pay band minimum when that minimum increases as a result of a pay band adjustment, but the employee cannot receive a pay adjustment because the employee's rating of record is below Fully Meets Expectations, as described in section C.4.

The maximum rate of each pay band is extended 5 percent above the normal maximum for all employees with a

rating of record at the highest level (currently called ''Significantly Exceeds Expectations'' in NNSA). This feature will help ensure that the range of available pay rates will be adequate to recognize truly outstanding performance. If an employee within this rate extension receives a rating of record below the highest level, the employee's rate may not be increased except as necessary to prevent the rate of an employee with a rating of record of Fully Meets Expectations or higher from falling below the normal pay band maximum due to a rate range adjustment.

6. Rate of Basic Pay Upon Initial Appointment

Upon appointment to a demonstration project position under Delegated Examining, Direct-Hire Authorization, or other authority primarily designed for initial entry into the Federal service (*e.g.*, Veterans Employment Opportunity Act, 30% Disabled Veteran Appointment), an appointee's pay rate may be set at any rate within the normal pay band range. In exercising this flexibility, NNSA will consider the appointee's qualifications, competing job offers, NNSA's need for the appointee's talents, the appointee's potential contributions to NNSA mission accomplishment, and the rates received by on-board employees. This flexibility will allow NNSA to compete more effectively with private industry for the best talent available, though managers will be expected to use this flexibility with great judiciousness and prudence.

7. Rate of Basic Pay Upon Promotion

Upon promotion to a higher pay band, an appointee's pay rate generally will be set at a rate within the normal pay band range to which the appointee is being promoted that provides a pay increase of 8 percent, unless a greater increase is necessary to set pay at the normal range minimum. NNSA may establish exceptions to this policy to deal with employees receiving a retained rate, employees who are re-promoted shortly after a demotion, employees with exceptional performance warranting a larger increase with higher management approval, etc. In exercising this flexibility, NNSA will consider the appointee's qualifications, competing job offers, NNSA's need for the appointee's talents, and the appointee's potential contributions to NNSA mission accomplishment. A pay band in a different career path will be considered to be a higher pay band (i.e., a promotion) under policies prescribed by NNSA. NNSA may adopt policies providing a promotion-equivalent increase to a Federal employee outside the demonstration project who is selected, through merit promotion procedures, to fill a higher-level position (as defined in NNSA policies) covered by the demonstration project.

NNSA may establish special rules for computing the promotion increase for promotions involving positions covered by a staffing supplement that take into account the staffing supplement and locality pay, subject to guidance provided by OPM.

8. Rate of Basic Pay in Noncompetitive Lateral Actions

Upon non-competitive lateral movement (e.g., via transfer or reassignment) to a demonstration project position from another Federal position, an employee's pay rate will be set at an amount that is equal to the employee's current pay rate. For such an employee moving from a position outside the demonstration project, NNSA may provide an immediate increase in the rate of basic pay to reflect the prorated value of the employee's next scheduled within-grade increase under the former pay system, consistent with the requirements in section V.A.

9. Other Pay Administration Provisions

Performance-based pay adjustments described in section C will be made to the rate of basic pay. These adjustments are scheduled to be made on the same date that annual rate range adjustments normally take effect—i.e., the first day of the first pay period beginning on or after January 1.

Locality-based comparability payments under 5 U.S.C. 5304 will be paid on top of the rate of basic pay in the same manner as those payments apply to other GS employees. Staffing supplements may apply as described in section III.A.10.

Subject to guidance provided by OPM, NNSA will establish final pay administration rules for determining an employee's rate of pay upon initial appointment, promotion, demotion, transfer, reassignment, or other position change, as needed. In addressing geographic conversions and simultaneous pay actions, such rules must be consistent with 5 CFR 531.205 and 5 CFR 531.206, respectively.

The grade retention provisions in 5 U.S.C. 5362 and 5 CFR part 536 are not applicable (i.e., no band retention). The pay retention rules in 5 U.S.C. 5363 and 5 CFR part 536 continue to apply to demonstration project employees, except that an employee with a rating of record below Fully Meets Expectations may not receive an increase in his or her retained rate under 5 U.S.C. 5363(b)(2)(B). If such an employee's retained rate falls below the applicable pay band adjusted maximum rate (including any applicable locality payment or staffing supplement), pay retention ceases and the rate is converted to an equal within-pay band rate (i.e., the rate is not set at the range maximum).

When applicable, the saved pay rules in 5 U.S.C. 3594 and 5 CFR 359.705 for former members of the Senior Executive Service continue to apply to demonstration project employees, except that an employee with a rating of record below Fully Meets Expectations may not receive an increase in his or her saved rate under 5 U.S.C. 3594(c)(2). If such an employee's retained rate falls below the applicable range adjusted maximum rate, pay retention ceases and the rate is converted to an equal within-range rate (i.e., the rate is not set at the range maximum).

An employee's rate of basic pay may not exceed the normal maximum rate for the employee's band unless the employee is receiving a retained rate under 5 U.S.C. 5363 or a saved rate under 5 U.S.C. 3594 or is entitled to a rate within the upper range extension, as provided under section III.A.5. An employee's rate of basic pay may not be below the normal minimum rate for the employee's grade unless the employee's most recent rating of record is below Fully Meets Expectations.

NNSA may adopt supplemental pay administration policies governing matters not specifically addressed in this plan, subject to any OPM guidance.

10. Staffing Supplements

An employee who is assigned to an occupational series and geographic area covered by an OPM-established special rates schedule, and who meets any other applicable coverage requirements, will be entitled to a staffing supplement if the maximum adjusted rate for a covered position in the GS grades corresponding to the employee's band is a special rate that exceeds the applicable maximum GS locality rate. The staffing supplement is added on top of the rate of basic pay in the same manner as locality pay. An employee will receive the higher of the applicable locality payment or staffing supplement.

For employees being converted into the demonstration project, the employee's total pay immediately after conversion will be the same as immediately before, but a portion of the total will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to

the conversion process as there will be no change in the total salary rate. The staffing supplement is calculated as described below.

Upon conversion, the demonstration base rate will be established by dividing the employee's former GS adjusted rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS base rate corresponding to that special rate (step 10 GS base rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base rate by the staffing factor minus one. Therefore, the employee's final demonstration special staffing rate equals the demonstration base rate plus the special staffing supplement; this amount will equal the employee's former GS adjusted rate.

Simplified, the formula is this:

Staffing factor = (Maximum special rate for banded grades) / (GS base rate corresponding to that special rate)

Demonstration base rate = (Former GS adjusted rate [special or locality rate]) / (Staffing factor)

Staffing supplement = demonstration base rate × (staffing factor − 1)

Salary upon conversion = demonstration base rate + staffing supplement [sum will equal existing rate]

If a special rate employee is converted to a band where the maximum GS adjusted rate for the banded grades is a locality rate, when the employee is converted into the demonstration project, the demonstration base rate is derived by dividing the employee's former special rate by the applicable locality pay factor (for example, in the Washington-Baltimore area, the locality pay factor is 1.175 in 2006). The employee's demonstration locality-adjusted rate will equal the employee's former GS adjusted rate.

Any General Schedule or special rate schedule adjustment will require recomputation of the staffing supplement. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied, as appropriate. Upon geographic movement, an employee who receives the special staffing supplement will have the supplement recomputed; any resulting reduction in the supplement will not be considered an adverse action or a basis for pay retention.

Established salary including the staffing supplement will be considered basic pay for the same purposes as a special rate under 5 CFR 530.308—e.g., for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave. Staffing supplement adjusted rates are subject to the Executive Schedule level IV cap that applies to GS locality rates and special rates.

B. Performance Appraisal

NNSA recognizes the importance of maintaining highly credible performance management systems. NNSA will use a performance management program under the Department of Energy appraisal system that has been approved by OPM consistent with chapter 43 of title 5, United States Code. Throughout the duration of the demonstration project, the effectiveness of performance management within the project will be monitored by examining metrics and assessments that will be included in the demonstration project evaluation plan.

1. Program Requirements

The NNSA performance appraisal program requires written performance plans for each covered employee containing the employee's performance elements and standards. The performance plan links the performance elements and standards for individual employees to the organization's strategic goals and objectives. Ongoing feedback and dialogue between employees and their supervisors regarding performance is required. In addition, the program provides for, at a minimum, one mid-year progress review.

The NNSA appraisal program, including its performance levels and standards, provides for making meaningful distinctions in performance. The program currently uses a four-level rating pattern to both summarize performance and to appraise performance at the element level. Its summary level pattern under 5 CFR 430.208(d) uses Levels 1, 2, 3, and 5, which NNSA has labeled Does Not Meet Expectations, Needs Improvement, Fully Meets Expectations, and Significantly Exceeds Expectations, respectively. Employees must be covered by their performance plan for at least 90 days before they can be assigned a rating of record. Supervisors and managers apply the appraisal program in a way that makes appropriate differentiations in performance. These differentiations reflect overall organizational performance. Employees receive a written performance appraisal (i.e., a rating of record) annually. Forced distributions of ratings are prohibited. Each annual appraisal period will begin on October 1 and end on the following September 30. Performance appraisals will be completed in a timely manner to support pay decisions in accordance with section C.

Additional guidance on the NNSA performance appraisal program is provided through internal operations manuals. Performance appraisal is an evolutionary process, and changes may be made during the course of the demonstration project based on findings from our ongoing evaluations and reviews. Any changes will be communicated to affected employees, and they will be given a chance to comment before NNSA implements the changes.

2. Supervisory Accountability

Supervisors are responsible for providing appropriate consequences for employee performance by addressing poor performance and recognizing exceptional performance. The performance plans for supervisors and managers include the degree to which supervisors and managers plan, assess, monitor, develop, correct, rate, and reward subordinate employees' performance. It is recognized that specific training must be provided to prepare supervisors and managers to exercise these responsibilities. NNSA has provided supervisory training each of the past three years on philosophical and procedural aspects of its new and still evolving performance management program (i.e., the lessons learned in the administration of each performance appraisal cycle have resulted in refinements each subsequent year). NNSA understands that this demonstration project will heighten the need for continuing supervisory training to support the accurate and realistic appraisal of performance.

3. Reconsideration of Ratings

To support fairness and transparency for the program and its consequences, employees have an opportunity to request reconsideration of a rating of record by a management official other than the rating official. Such reconsiderations must be initiated no more than 15 days after the official rating of record is assigned, consistent with the applicable administrative grievance policy. If the reconsideration of the appraisal results in a different

rating of record, the revised rating of record will become the basis for the employee's pay adjustment(s) in accordance with section C. If the adjustment occurs after all pay deliberations have been finalized, it does not result in a recalculation of other employees' pay adjustments.

C. Performance-Based Pay Adjustments

1. Pay Pools

Participating employees whose most recent rating of record is below Fully Meets Expectations will not receive an annual across-the-board increase as do GS employees. Funds that otherwise would be spent on the across-the-board GS pay adjustment, WGIs, and QSIs for demonstration project employees will instead be placed into a pay pool, which will be used to fund annual performance-based pay increases for those employees. The pay pool also may include funds saved through the elimination of promotion increases for promotions between grades that are consolidated into the same band. A share mechanism will be used (1) to ensure that employees with higher ratings of record receive greater pay increases than employees with relatively lower ratings of record and (2) to control costs without resorting to a forced distribution of ratings. Each employee will be assigned a certain number of shares, based on his or her rating of record in accordance with section C.2. All employees in the normal band rate range whose rating of record is at least Fully Meets Expectations will receive an adjustment equal to at least the amount of the annual GS base pay comparability increase under 5 U.S.C. 5303.

Participating organizations will establish pay pools for allocating performance pay increases. NNSA will determine which participating employees are covered by any pay pool and determine the dollar value of each pay pool. In setting the value of pay pools, NNSA will initially allocate an amount for performance pay increases equal to the estimated value of the WGIs, QSIs, and annual GS pay adjustments that otherwise would have been paid to participating employees. In computing the estimated value of WGIs and QSIs, NNSA may use Governmentwide averages.

2. Performance Shares

NNSA will establish rating/share patterns for each pay pool—that is, the relationship between a rating of record and a single number of shares. NNSA rating/share patterns will ensure that a higher rating of record receives a higher performance payout percentage for employees in the normal rate range.

NNSA may adjust rating/share patterns over time after coordination with OPM, and after giving affected employees advance notice. A change in the rating/share pattern may be applied in computing performance-based pay adjustments based on an appraisal period only if it takes effect at least 120 days before the end of that appraisal period. Initially, the number of shares for each rating level will be as follows: 3 shares are assigned to the Significantly Exceeds Expectations rating, 2 shares to the Fully Meets Expectations rating, and 1 share to the Fully Meets Expectations rating when the employee receives a rating of Needs Improvement in a critical element but the Final Summary Rating is Fully Meets Expectations.

No shares may be assigned to any rating of record below Fully Meets Expectations, since no pay increase is payable to employees with such a rating of record. After the ratings of record and shares are assigned to employees, the value of a single share can be calculated.

In addition to performance-based pay increases, demonstration project employees remain eligible to receive both monetary and non-monetary forms of recognition, so long as employees are not rewarded twice for the same contributions using incentive awards authorities under Chapter 45 of title 5. NNSA will adopt supplemental award administration policies not specifically covered by this plan.

3. Pay Adjustments

In general: NNSA will determine the value of one performance share, expressed as a percentage of the employee's rate of basic pay, based on the value of the pay pool and the distribution of shares among pay pool employees. An individual employee's performance payout is determined by multiplying the determined percentage value of a performance share by the number of shares assigned to the employee. The performance payout is computed as a percentage of the employee's rate of base pay as in effect on the date determined in NNSA policies. On the first day of the first pay period beginning on or after January 1 of each year, this amount must be paid as an increase in the employee's rate of basic pay, but only to the extent that it does not cause the employee's rate to exceed the applicable maximum of the employee's rate range. Notwithstanding the preceding sentence, employees in the upper band extension rated below the highest rating level are subject to special rules as described in section III.A.5. Any portion of an employee's performance pay increase amount that cannot be delivered as a basic pay increase will be paid out as a lump sum (with no charge to the pay pool). Such a lump-sum payment is not basic pay for any purpose and is not a cash award under chapter 45 of title 5, United States Code.

An employee with a rating of record of Fully Meets Expectations or higher may not receive a performance payout that is less than the percentage value of any simultaneous rate range adjustment, except for (1) an employee receiving a retained rate and (2) an employee in the upper band extension with a rating of record below Significantly Exceeds Expectations (as provided in section III.A.5). This guaranteed amount will be used in place of any lower performance payout resulting from the share methodology. Any additional costs of using the guaranteed amount will be funded outside the pay pool. Otherwise, the guaranteed amount is applied in the same manner as the regular performance payout.

An employee who does not have a rating of record for the appraisal period most recently completed will be treated the same as employees in the same pay pool who received the modal rating for that period, subject to NNSA proration policies.

NNSA may establish policies on prorating the performance pay increases and/or lump-sum payments for an employee who, during the period between annual pay adjustments, was (1) hired or promoted, (2) in leave-without-pay status, (3) on a part-time work schedule, or (4) in other circumstances that make proration appropriate.

If an employee's rating of record that is the basis for a performance payout is retroactively revised (after the regular effective date of performance payouts) through a reconsideration or grievance process, the employee's performance payout must be retroactively recomputed using the share value as originally determined. Any such retroactive corrections are not funded out of the pay pool and do not affect the performance payouts provided to other employees in the pay pool. In setting the size of a future pay pool, management will take into account past and projected corrections.

Special provisions for employees returning to duty after a period of service in the uniformed services or in receipt of workers' compensation benefits: Special pay-setting provisions apply to employees who do not have a rating of record to support a pay adjustment but who are returning to duty status after a period of leave

without pay or separation during which the employee (1) was serving in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) with legal restoration rights (e.g., 38 U.S.C. 4316), or (2) was receiving workers' compensation benefits under 5 U.S.C. chapter 81, subchapter I. In these cases, NNSA will determine the employee's prospective rate of basic pay upon return to duty by making performance pay adjustments for the intervening period based on the modal rating of record for employees in the same pay pool. The performance pay increases during the intervening period may not be prorated based on periods covered by this provision. In addition, a performance pay increase that is effective after the employee's return to duty may not be prorated based on periods covered by this provision. A lump-sum payment for a period including actual service performed after the employee's return to duty must be prorated (based on service covered by this provision) under the same agency proration policies that apply generally to periods of leave without pay.

Special provision for employees receiving a retained rate: An employee receiving a retained rate under 5 U.S.C. 5363 or 5 U.S.C. 3594 is not eligible for a basic pay increase except in conjunction with a rate range adjustment. For a retained rate employee whose rating of record is Fully Meets Expectations or higher, the retained rate must be adjusted consistent with the normal pay retention rules (5 CFR part 536, subpart C, or 5 CFR 359.705, as applicable)—i.e., 50 percent of an increase in the applicable maximum rate of the grade, but if the resulting rate would fall below the new range maximum, the employee's rate of basic pay must be set at the range maximum. A retained rate employee whose rating of record is below Fully Meets Expectations may not receive an increase in basic pay. At the discretion of the Administrator or the Administrator's designee, a retained rate employee may receive the same lump-sum payment approved for an employee in the same pay pool who is at the applicable range maximum and who has the same performance rating of record and number of shares.

4. Employees Who Do Not Receive a Pay Adjustment

Employees with a rating of record below Fully Meets Expectations are prohibited from receiving a pay increase, except if necessary to prevent an employee's rate from falling more than 5 percent below the normal range minimum. When an employee does not receive a pay increase because of performance below Fully Meets Expectations, his or her pay rate may fall below the normal minimum rate of the pay band, since that range minimum may be increasing. However, in no case may an employee's rate of basic pay be reduced more than 5 percent below the normal range minimum. In other words, the minimum of the band is extended by 5 percent for employees rated below Fully Meets Expectations.

If NNSA chooses to give such an employee a new rating of record of Fully Meets Expectations or higher before the end of the current appraisal period, the employee is entitled to an increase effective on the first day of the first pay period beginning on or after the date the new rating of record is final. The increase must be the same dollar amount as the increase the employee would have received if he or she had been rated Fully Meets Expectations at the time the increase was initially denied.

Each employee who does not receive an increase in basic pay because his or her performance is less than Fully Meets Expectations will be entitled to be notified promptly in writing of that fact. At the same time, the employee must be informed in writing of the right to request that the agency reconsider its determination, under the same procedures prescribed by OPM regarding the determination not to provide a within-grade increase under 5 U.S.C. 5335(c). The Merit Systems Protection Board will process any appeals under this section in the same manner that it processes appeals under 5 U.S.C. 5335(c).

5. Locality Pay and Staffing Supplement

When a locality-based comparability payment established under 5 U.S.C. 5304 is increased, a demonstration project employee whose most recent rating of record is below Fully Meets Expectations is entitled to the increased locality payment, but his or her underlying rate of basic pay will be reduced in a manner that ensures the employee's total rate of pay does not increase. This reduction is necessary to ensure, in an administratively feasible way, that an employee rated below Fully Meets Expectations will not receive a pay increase; it does not constitute a reduction in pay for purposes of applying the adverse action procedures in chapter 75 of title 5, United States Code. (Exception: An employee's rate of basic pay may not be reduced under this paragraph to the extent that the reduction would cause an employee's rate to fall more than 5 percent below the normal range minimum.)

Similarly, when a staffing supplement is increased, a demonstration project employee whose rating of record is below Fully Meets Expectations is entitled to the increased supplement, but his or her underlying rate of basic pay will be reduced in a manner that ensures the employee's total rate of pay does not increase.

D. Reduction-in-Force

1. If, during the life of the demonstration project, NNSA enters into a reduction-in-force (RIF), the RIF will be conducted in accordance with 5 U.S.C. 1302, 3502, and 3508 and 5 CFR part 351, except as follows:

(a) Each of the four career paths in each NNSA local commuting area will constitute separate competitive areas (*i.e.*, separate from the other career paths, and separate from the competitive areas of other NNSA employees);

(b) NNSA will establish competitive levels consisting of all positions in a competitive area which are in the same pay band and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one position may be reassigned to any of the other positions in the level without undue interruption. Each demonstration project competitive level will become a Retention List for purposes of competition when employees are released from their competitive levels, displaced by higher-standing employees, or placed during the exercise of assignment rights.

(c) Assignment rights will be modified by substituting ''one pay band'' for ''three grades'' and ''two pay bands'' for ''five grades.''

(d) NNSA will use retention standing when it chooses to offer vacant positions within the meaning of 5 CFR 351.704.

2. Prior to conducting a RIF, NNSA will issue and implement a policy for the establishment and operation of an agency-level reemployment priority list (RPL) designed to assist current NNSA competitive service demonstration project employees who will be separated as a result of a RIF and, subsequently, former NNSA competitive service demonstration project employees who have been separated as a result of a RIF, or who have fully recovered from a compensable injury after more than one year, in their efforts to be reemployed at NNSA, by affording them priority consideration over certain outside job applicants for NNSA

competitive service demonstration project vacancies.

NNSA will develop and adopt supplemental RIF administration procedures to augment the RIF policies stipulated by this plan.

IV. Training

As NNSA has learned during the past three years of implementing and refining a new performance management program, training for all involved will be essential to the success of the demonstration project. Training will be provided to employees, supervisors, and managers before the project is launched and throughout the life of the project. It is important that employees perceive the performance management program as fair and transparent; therefore, supervisors and managers will be trained extensively in setting and communicating performance expectations; monitoring performance and providing timely feedback; developing employee performance and addressing poor performance; rating employees' performance based on expectations; and involving employees in the development and implementation of the performance appraisal program. Supervisors and managers will be held accountable for the effective management of the performance of employees they supervise through performance expectations set for and appraisals made of their own performance in this regard.

All employees will be trained in the performance appraisal process and the pay adjustment mechanism. Various types of training are being considered, including videos, on-line tutorials, and train-the-trainer concepts.

V. Conversion

A. Conversion to the Demonstration Project

1. Employees whose positions become covered by the demonstration project will convert into the career path and pay band covering the occupational series and grade of their position of record. Employees will convert to the demonstration project with no change in their total rate of pay (including basic pay, plus any applicable locality payment, special rate supplement, or staffing supplement). Special conversion rules apply to special rate employees as described in section III.A.10, Staffing Supplements. Any simultaneous pay action that is scheduled to take effect under the GS pay system on the date of conversion must be processed before processing the conversion to the pay banding system. NNSA implementing policies will provide procedures for converting an employee on grade retention under 5 U.S.C. 5362 or receiving a retained rate under 5 U.S.C. 5363 or a saved rate under 5 U.S.C. 3594 to the demonstration project.

2. Immediately after conversion, eligible employees will receive an increase in basic pay reflecting the prorated value of the next scheduled within-grade increase (WGI). The prorated value is determined by calculating the portion of the time-in-step employees have completed towards the waiting period for their next WGI. This WGI ''buy-in'' adjustment will not be paid to (1) employees who are at the step 10 rate for their grade immediately before conversion to the demonstration project, (2) employees who are receiving a retained rate of pay under 5 U.S.C. 5363 or saved rate under 5 U.S.C. 3594 immediately before conversion to the demonstration project, or (3) employees whose rating of record is below Fully Meets Expectations.

3. Adverse action provisions under 5 U.S.C. chapter 75, subchapter II, do not apply to reductions in pay upon conversion into the demonstration project as long as the employee's total rate of pay (including basic pay, plus any applicable locality payment, special rate supplement, or staffing supplement) is not reduced upon conversion.

4. The first performance-based pay increase under the project's pay adjustment mechanism will be effective on the first day of the first pay period beginning on or after January 1, 2008.

5. For employees who enter the demonstration project by lateral reassignment or transfer (*i.e.*, not by conversion of position), NNSA may apply parallel pay conversion rules, including rules for providing a prorated adjustment reflecting time accrued toward a GS within-grade increase or similar within-range adjustment under another pay system. If conversion into the demonstration project is accompanied by a geographic move, the employee's pay entitlements under the former pay system in the new geographic area must be determined before performing the pay conversion.

B. Conversion to the General Schedule System

NNSA implementing policies will provide procedures for converting an employee's pay band and pay rate to a GS-equivalent grade and rate of pay if the employee moves out of the demonstration project to a GS position. The converted GS-equivalent grade and rate of pay will be determined before any geographic move, promotion, or other simultaneous action that occurs simultaneously with conversion back to the GS system. The new employing organization must use the converted GS-equivalent grade and rate of pay in applying various pay administration rules that govern how pay is set in the GS position (*e.g.*, rules for promotion and highest previous rate under 5 CFR part 531, subpart B, and grade and pay retention under 5 CFR part 536). The converted GS grade and rate of pay are deemed to have been in effect at the time the employee left the demonstration project pay banding system. The rules for determining the converted GS grade for pay administration purposes do not apply to the determination of an employee's GS-equivalent grade for other purposes, such as reduction-in-force or adverse action. NNSA will perform the computations for employees who remain within NNSA and DOE. NNSA may perform the computations, as a courtesy, for employees who move to other Federal agencies. At a minimum, NNSA will provide a copy of the conversion procedures to gaining Federal agencies for their use. If an employee moves out of the demonstration project to a non-GS system, the employee's pay will be set under the pay-setting rules governing that system.

VI. Project Duration

The initial implementation period for the demonstration project will be 5 years. However, with OPM's concurrence, the project may be extended, modified, or terminated on or before the expiration of the five-year period.

VII. Project Evaluation

Chapter 47 of title 5, United States Code, requires an evaluation of the results of the demonstration project. NNSA, in coordination with OPM, will develop a plan to evaluate the demonstration project to determine the extent to which the pay increases paid to participating employees reflect meaningful distinctions among their levels of performance and the extent to which the project is achieving its other stated goals. Workforce data will be analyzed to make this assessment and to determine whether the project is resulting in any adverse impact on particular groups of employees. Key indicators, including leadership commitment, communication, stakeholder involvement, training, planning, mission alignment, and the rewarding of performance, will be assessed to ensure compliance with stated project goals. The evaluation will address the extent to which the project

has incorporated the elements required by section 1126 of Public Law 108–136 (5 U.S.C. 4701 note). In addition, the project will be examined during each phase of the evaluation to assess that costs are being managed effectively. Moreover, cost discipline will be examined during each phase of the evaluation to ensure spending remains within acceptable limits. Finally, employee feedback will be sought through surveys, interviews, and focus groups to assess employee perceptions of the fairness and integrity of the performance appraisal and pay adjustment processes.

VIII. Costs

A. Buy-in Costs

There will be added costs resulting from the within-grade increase ''buy-in'' provision described in section V; however, those costs will be offset to some degree by the elimination of within-grade step increases that otherwise would have occurred.

B. Recurring Costs

All funding will be provided through the organization's budget. No additional funding will be requested specifically for this project; all costs will be charged to available funds through existing appropriations, including those incurred in the areas of project development, training, and project evaluation.

IX. Waiver of Laws and Regulations Required

A. Title 5, United States Code

Chapter 35, section 3594: Saved pay for former members of the Senior Executive Service (only to the extent necessary to bar employees with a rating of record lower than Fully Meets Expectations from receiving saved rate increases under 5 U.S.C. 3594(c)(2))

Chapter 51, section 5104: Basis for grading positions.

Chapter 51, section 5106: Basis for classifying positions.

Chapter 51, section 5107: Classification of positions.

Chapter 53, section 5303: Annual adjustments to pay schedules.

Chapter 53, section 5305: Special pay authority.

Chapter 53, sections 5331–5336: General Schedule pay rates (except that, for purposes of applying any other laws, regulations, or policies that refer to GS employees or to subchapter III of chapter 53 of title 5, United States, Code, the modified pay system established under this plan must be considered to be a GS pay system established under such subchapter III; this includes, but is not limited to, references to the General Schedule in section 5304 (relating to locality pay), section 5545(d) (relating to hazard pay), and sections 5753–5754 (dealing with recruitment, relocation, and retention incentives))

Chapter 53, section 5362: Grade retention.

Chapter 53, section 5363: Pay retention (only to the extent necessary to (1) replace ''grade'' with ''band'' and (2) bar employees with a rating of record lower than Fully Meets Expectations from receiving retained rate increases under 5 U.S.C. 5363(b)(2)(B).

Chapter 75, section 7512(34): Adverse actions (only to the extent necessary to replace ''grade'' with ''band'').

Chapter 75, section 7512(4): Adverse actions (only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions into the demonstration project from the General Schedule or other pay system, as long as the employee's total rate of pay is not reduced and (2) reductions in rates of basic pay to offset a locality pay or staffing supplement increase as a result of receiving a rating of record below Fully Meets Expectations.)

Note: If any of the provisions of title 5, United States Code, listed above are amended during the period this demonstration project is in effect, NNSA may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. NNSA must notify OPM when any such waiver is terminated.

B. Title 5, Code of Federal Regulations

Part 300, subpart F, section 300.604: Restrictions (only to the extent necessary to restrict advancement to a higher pay band to candidates who have completed a minimum of 52 weeks in positions no more than one pay band lower than the position to be filled).

Part 330, subpart B, section 330.201: Establishment and maintenance of Reemployment Priority List (RPL) (only to the extent necessary to establish and maintain a reemployment priority list exclusively for NNSA competitive service demonstration project employees).

Part 351, subpart D, section 351.402: Competitive area (only to the extent necessary to permit the use of career paths in conjunction with organizational units and geographic locations when establishing competitive areas).

Part 351, subpart D, section 351.403: Competitive level (only to the extent necessary to substitute ''same pay band'' for ''same grade'').

Part 351, subpart G, section 351.701: Assignment involving displacement (only to the extent necessary to substitute ''one pay band'' for ''three grades'' and ''two pay bands'' for ''five grades'').

Part 359, subpart G, section 359.705: Pay (only to the extent necessary to bar employees with a rating of record lower than Fully Meets Expectations from receiving a saved rate increase under 5 CFR 359.705(d)(1)).

Part 430, subpart B, section 430.203: Definitions (only to the extent necessary to allow an additional rating of record to support a pay decision under C.3 or 4 of this project plan).

Part 511, subpart B: Coverage of the General Schedule.

Part 530, subpart C: Special Rate Schedules for Recruitment and Retention.

Part 531, subpart B: Determining Rate of Basic Pay.

Part 531, subpart D: Within-Grade Increases.

Part 531, subpart E: Quality Step Increases.

Part 536, subpart B: Grade Retention.

Part 536, subpart C: Pay Retention (only to the extent necessary to (1) replace ''grade'' with ''band'' and (2) bar employees with a rating of record lower than Fully Meets Expectations from receiving retained rate increases under 5 CFR 536.305.

Part 550, section 550.703: Definitions (to the extent necessary to modify paragraph (c)(4) of the definition of ''reasonable offer'' by replacing ''two grade or pay levels'' with ''one pay band level'' and ''grade or pay level'' with ''pay band level'').

Part 752, section 752.401(a)(3): Adverse actions (only to the extent necessary to replace ''grade'' with ''band'').

Part 752, section 752.401(a)(4) Adverse actions (only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions into the demonstration project from the General Schedule or other pay system, as long as the employee's total rate of pay is not reduced and (2) reductions in rates of basic pay to offset a locality pay or staffing supplement rate increase as a result of receiving a rating of record below Fully Meets Expectations).

Note: If any of the provisions of title 5, Code of Federal Regulations, listed above are revised during the period this demonstration project is in effect, NNSA may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. NNSA must

notify OPM when any such waiver is terminated.

[FR Doc. E7–3454 Filed 2–27–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55328; File No. SR–Amex–2007–16]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to an Amendment to the Options Marketing Fee

February 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On February 14, 2007, the Amex submitted Amendment No. 1 to the proposed rule change. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Amex under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to decrease the equity options marketing fee from the current level of $0.75 to $0.35 per contract for those equity, exchange traded fund share, and trust issued receipt options series that quote and trade in one cent increments under the penny pilot program. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.amex.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposal seeks to reduce the current fee of $0.75 per contract to $0.35 per contract for those equity, exchange traded fund share, and trust issued receipt options series that quote and trade in one cent increments under the penny pilot program. In February, 2006, the Exchange increased its equity options marketing fee from $0.40 per contract on the transactions of specialists and registered options traders (''ROTs'') in equity options to $0.75 per contract (except for SPDR options which will continue to remain subject to the current fee level of $1.00 per contract[5]).[6]

Currently, the equity options marketing fee is assessed on electronically executed customer orders from firms that accept payment for directing their orders to the Exchange (''payment accepting firms'') with whom a specialist has negotiated a payment for order flow arrangement.

The Exchange has no role with respect to the negotiations between specialists and payment accepting firms. The Exchange collects and administers the payment of the fee collected on those transactions for which the specialist has advised the Exchange that it has negotiated with a payment accepting firm to pay for the firm's order flow. Included in this general administrative support, the Exchange tracks the number of qualified orders sent by a payment accepting firm, bills specialists and ROTs through their clearing firms, and issues payments to payment accepting firms to reflect the collection and payment of the marketing fee. The Exchange rebates to specialists and ROTs, on a quarterly basis, the amount of marketing fees collected that have not been paid to order flow providers.

The specialists are solely responsible, but are not required, to negotiate payment for order flow agreements with payment accepting firms and are responsible for any arrangements made with the payment accepting firms. The specialists will use the funds that are collected from a particular post on the Exchange to market for those specific products traded at that particular post on the Exchange. Additionally, supplemental registered options traders have the ability to enter into payment for order flow agreements with affiliated firms. So long as it is within the above described parameters, the specific terms governing the orders that qualify for payment and the amount of any payments are determined by the specialists in their discretion.

The Exchange asserts that the proposal is equitable, as required by Section 6(b)(4) of the Act.[7] In connection with the revision to the said options marketing fee, the Exchange notes that decreasing the fee in the delineated circumstances from $0.75 to $0.35 per contract is reasonable given the competitive pressure to attract options order flow. Accordingly, the Exchange believes that the proposal is an equitable allocation of reasonable fees among Exchange members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and Section 6(b)(4) of the Act[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among exchange members and issuers and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] *See* Securities Exchange Act Release No. 51685 (May 11, 2005), 70 FR 28587 (May 18, 2005) (SR–Amex–2005–050).

[6] *See* Securities Exchange Act Release No. 53341 (February 21, 2006), 71 FR 10085 (February 28, 2006) (SR–Amex–2006–15).

[7] Section 6(b)(4) of the Act states that the rules of a national securities exchange should provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2)[11] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–16 and should be submitted on or before March 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–3408 Filed 2–27–07; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on February 14, 2007, the date on which the Exchange filed Amendment No. 1.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55329; File No. SR–NASDAQ–2007–008]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify Opening Process for Nasdaq Market Center

February 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 12, 2007, The NASDAQ Stock Market LLC (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by Nasdaq. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is proposing to modify Rule 4752 to clarify that in the Nasdaq Market Center (''System''), securities listed on the New York and American Stock Exchanges, which are not subject to an opening cross, open for the pre-market session in the same manner as Nasdaq-listed securities. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and *http://www.nasdaq.complinet.com/nasdaq/display/index.html.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to modify Rule 4752 to clarify that in the Nasdaq Market Center (''System''), securities listed on the New York and American Stock Exchanges, which are not subject to an opening cross, open for the pre-market session in the same manner as Nasdaq-listed securities. Specifically, at 7 a.m., the System adds to the Nasdaq book in time priority all eligible orders in accordance with each order's defined characteristics. At 9:25 a.m., the System opens all remaining unopened Quotes in accordance with each firm's instructions. As with Nasdaq securities, market participants quoting in NYSE/

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq has requested that the Commission waive the 5-day written notice of intention to file the proposed rule change. In addition, Nasdaq has asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

Amex securities may instruct Nasdaq to open their quotes either at the price of the firm's quote when the quote was closed by the participant during the previous trading day or at a price and size entered by the participant between 7 a.m. and 9:24:59 a.m.

This opening process is consistent with the opening process for NYSE/Amex securities that was utilized for such securities in Nasdaq's ITS/CAES system pursuant to NASD Rule 4707(d) with the exception that the NMC System opens at 7 a.m. rather than 7:30 a.m.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(5) of the Act,[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change clarifies certain terms in Nasdaq's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Section 19b–4 of the Act normally does not become operative prior to 30 days after the date of the filing.[10] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii) under the Act.[11] Because the filing would conform the opening of trading in NYSE/Amex securities to the opening of trading in Nasdaq securities, thus streamlining the Nasdaq's opening process, the Commission believes waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2007–008 in the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2007–008 and should be submitted on or before March 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–3493 Filed 2–27–07; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has decided to waive the five-day pre-filing notice requirement.

[11] *Id.*

[12] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78C(F).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55330; File No. SR–NYSEArca–2007–06]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Obvious Errors in Option Transactions

February 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 18, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 6.87, which contains procedures for trade nullification and price adjustments on obvious errors in option transactions. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nysearca.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Rule 6.87 in order to offer an extra level of protection for Customers[5] who are a party to a transaction involving an obvious error during the opening. Under existing rules, OTP Holders that have executed a trade on behalf of a Customer have a twenty (20) minute period from the time of execution to notify the Exchange and request a review of the trade for either nullification or price adjustment. The current twenty minute window, for nullification purposes, would not be changed by this proposal. However, under the proposed rule change, OTP Holders representing Customers would now have an extended period of time to request an obvious error review for adjustment purposes. OTP Holders would now be able to make a request to Trading Officials[6] to make price adjustments on transactions that occur on the opening, until 4:30 p.m. (ET) on the day that the transaction occurs. The intention of this filing is to protect Customers who fail to discover an obvious error within twenty minutes of execution from being forced to accept an execution that results from an obvious error during the opening auction.

An obvious pricing error is deemed to have occurred when the execution price of a transaction is higher or lower than the theoretical price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2	$0.25
$2 to $5	0.40
Above $5 to $10	0.50
Above $10 to $20	0.80
Above $20	1.00

The theoretical price of an option is, for series that are traded on at least one other exchange, the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, disseminated by the competing options exchange that has the most liquidity in the option class over the previous two calendar months. If there are no quotes for comparison, the theoretical price shall be determined by designated Trading Officials.

For transactions during the opening auction between a Customer and a Market Maker,[7] after the twenty minute notification period has elapsed since the trade containing the obvious error occurred but before 4:30 p.m. (ET) on the same trading day, the OTP Holder, on behalf of its Customer, could request an obvious error review for possible adjustment to the theoretical price. In determining the theoretical price of an option series, the Trading Official would look to the away competing exchange with the most liquidity in the option class over the two preceding months. The transaction would be adjusted to the competing exchanges' disseminated theoretical price at the time the trade occurred. With respect to sell transactions the last bid price, just prior to the trade, would be used. With respect to buy transactions the last offer price, just prior to the trade would be used.[8] Price adjustments would be made up to the equivalent number of contracts that the competing exchange was listing as its disseminated size at the time the trade occurred.

For transactions during the opening auction between a Customer and a non-Market Maker,[9] after the twenty minute notification period has elapsed but before 4:30 p.m. (ET) on the same trading day, an OTP Holder, on behalf of its Customer, could request an obvious error review. In determining how to adjust the transaction to the theoretical price, the Trading Official would look to the away competing exchange with the most liquidity in the option class over the two preceding months. The transaction would be adjusted to the competing exchanges' disseminated theoretical price at the time the trade occurred. With respect to sell transactions the last bid price, just prior to the trade, would be used. With respect to buy transactions the last offer price, just prior to the trade would be used.[10] Price adjustments would be made up to the equivalent number of contracts that the competing exchange was listing as its disseminated size at the time the trade occurred.

The rule changes proposed in this filing are similar to those presented by the Chicago Board Options Exchange (''CBOE'') in SR–CBOE–2005–63.[11] In that filing, the CBOE amended CBOE Rule 6.25 to include substantially similar provisions that NYSE Arca is presenting at this time. The Exchange notes that the Commission did receive one comment letter from Citadel Investment Group L.L.C. (the ''Citadel

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] ''Customer'' as defined in NYSE Arca Rule 6.1(b)(29) and NYSEArca 6.1A(a)(4) shall mean a non-broker dealer.

[6] ''Trading Official'' as defined in NYSE Arca Rule 6.1(b)(34).

[7] ''Market Maker'' as defined in NYSE Arca Rule 6.32 or 6.32A.

[8] The Exchange believes that the proposed basis for determining the theoretical price for transactions occurring during the opening does not implicate NYSE Arca users' trade through liability, because the Linkage Plan provides for an exception to trade through liability for transactions occurring on the opening.

[9] For the purpose of this rule ''non-Market Maker'' could include (but is not limited to) an away specialist, an off-floor firm or another Customer.

[10] *See, supra* note 8.

[11] *See* Securities Exchange Act Release No. 54004 (June 16, 2006), 71 FR 36139 (June 23, 2006) (approval order for SR–CBOE–2005–63).

Letter'') regarding the CBOE proposal.[12] In its approval notice, the Commission stated that ''the Citadel Letter does not raise any issues that would preclude approval of the proposed rule change.'' NYSE Arca feels that any similar issues contained in the Citadel Letter that may be raised in regard to proposed rule changes contained in this filing would not preclude approval.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–06 and should be submitted on or before March 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–3494 Filed 2–27–07; 8:45 am]

BILLING CODE 8010–01–P

[12] *See* letter dated May 17, 2006 to Mr. Jonathan Katz, Secretary, Commission, from Mr. Matthew Hinerfeld, Deputy General Counsel, Citadel Investment Group, L.L.C. on behalf of Citadel Derivatives Group LLC.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55333; File No. SR–Phlx–2007–13]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to 100 Share Away Markets in Non-Nasdaq Securities on XLE

February 22, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 20, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Phlx. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to modify XLE, Phlx's equity trading system, so as to prevent XLE from trading through 100 share away quotations in non-Nasdaq securities. In addition, XLE will be modified to route to 100 share away quotations in non-Nasdaq securities. Accordingly, Phlx Rule 1(cc)(3) will be modified to include 100 share away quotations in the definition of Protected

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

Bids, Offers and Quotations for non-Nasdaq securities before the Trading Phase Date. The text of the proposed rule change is available at the Phlx, the Commission's Public Reference Room, and *http://www.phlx.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to reflect the impending elimination of the Intermarket Trading System (''ITS'') Plan in favor of the Trading Phase Date of Regulation NMS on March 5, 2007 by protecting additional away quotations in XLE. This would be accomplished by modifying XLE to consider 100 share bids, offers and quotations in non-Nasdaq securities in other markets as Protected Bids, Offers and Quotations beginning on February 26, 2007. Therefore, XLE would route to 100 share away quotations in non-Nasdaq securities and would not trade through or quote through such quotations unless simultaneously routing to those quotations, pursuant to Phlx Rules.

Currently, XLE trades and quotes through 100 share away quotations in non-Nasdaq securities. Additionally, XLE does not route to 100 share away quotations in non-Nasdaq securities. This is because in the ITS Plan, which applies to non-Nasdaq securities, and the Phlx Rules adopted pursuant to the ITS Plan, provide an exemption from trade-through and from locking and crossing protection for 100 share bids and offers of away markets. In contrast, commencing with the Trading Phase Date of Regulation NMS, which is currently March 5, 2007, the exemption for 100 share away quotation in the ITS Plan will not be available to Phlx (or any other exchange) under the new Order Protection Rule, Rule 611.[5] XLE will be ready for the Trading Phase Date in that it will not, among other things, trade or quote through 100 share away markets. However, Phlx believes that it is appropriate to modify its trading system, XLE, on February 26, 2007, to take 100 share away markets in non-Nasdaq securities into account for trading, quoting and routing because Phlx is currently rolling out XLE's routing functionality in non-Nasdaq securities.

Phlx has observed that other markets trading non-Nasdaq securities pursuant to the ITS Plan have modified or adapted their systems to provide for very rapid or immediate execution of their displayed quotations, including quotations of 100 shares. Phlx believes that the system modification in this proposed rule change could provide more opportunities for executions of orders that XLE routes away pursuant to Phlx Rules, since XLE would begin routing to 100 share away quotations, in addition to larger quotations. Finally, Phlx would modify Phlx Rule 1(cc)(3) to clarify the change to XLE by stating that a Protected Bid, Offer or Quotation in non-Nasdaq securities includes a 100 share bid, offer or quotation.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by increasing the category of Protected Bids, Offers and Quotations in non-Nasdaq securities to include 100 share away bids, offers and quotations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder[9] because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[10]

The Exchange has requested that the Commission waive the 30-day operative delay and make the proposed rule change operative on February 26, 2007. The Commission hereby grants the request.[11] The Commission believes that such waiver is consistent with the protection of investors and the public interest because the earlier operative date would enhance the protection of quotations in non-Nasdaq exchange-listed securities displayed in away markets in that, pursuant to the proposal, the Phlx would no longer trade or quote though 100 share away quotations in non-Nasdaq securities. Further, the earlier operative date will allow XLE Participants to gain additional experience with the expanded XLE trading environment and functionality prior to its full implementation on the Trading Phase Date.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[5] 17 CFR 242.611.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] Rule 19b–4(f)(6)(iii) under the Act requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Phlx has satisfied the pre-filing requirement.

[11] For purposes only of waiving the 30-day operative delay of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] *See* 15 U.S.C. 78s(b)(3)(C).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2007–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–13 and should be submitted on or before March 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–3491 Filed 2–27–07; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55331; File No. SR–Phlx–2007–09]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Definition of ''Complex Trade''

February 22, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 7, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Phlx. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1083(c) to revise the definition of ''Complex Trade'' as that definition applies to trades under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage (the ''Linkage Plan''). The text of the proposed rule change is available at the Exchange, in the Commission's Public Reference Room, and at *http://www.phlx.com/exchange/phlx_rule_fil.html.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the definition of ''Complex Trade'' in the Exchange's rules that relate to the Linkage Plan. For Linkage purposes, Exchange Rule 1083(c) currently defines a ''Complex Trade'' as a trade reflecting the execution of an order in an options series in conjunction with one or more other orders in different series in the same underlying security for the equivalent number of contracts.

Under the proposal, a ''Complex Trade'' includes a spread, straddle, or combination order where the number of contracts on the legs of the spread, straddle, or combination order differs by any ratio equal to or greater than one-to-three and less than or equal to three-to-one. A Complex Trade is exempt from trade-through liability.[5]

The Exchange notes that its current rules provide that the components of spread, straddle, and combination orders must generally offset one another on a one-for-one basis,[6] and that priority concerning ratio and other types of spreads currently applies only to foreign currency options.[7] In order to make those rules and the instant proposal consistent, the Exchange has filed a separate proposed rule change to permit such order types on other than a one-for-one basis, and to establish priority for such orders in all options traded on the Exchange.[8]

This proposal would adopt the same definition of ''Complex Trade'' for Linkage Plan purposes as that adopted by other options exchanges.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect

[5] *See* Exchange Rule 1085(b)(7).

[6] *See* Exchange Rules 1066(f) and (g).

[7] *See* Exchange Rules 1033(f), (g), and (h).

[8] *See* File No. SR-Phlx-2006–91.

[9] *See* Securities Exchange Act Release No. 55138 (January 19, 2007), 72 FR 3451 (January 25, 2007) (order approving File Nos. SR–Amex–2006–119; SR–BSE–2006–55; SR–CBOE–2006–109; SR–ISE–2006–73; and SR–NYSEArca–2007–01).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

investors and the public interest by establishing a uniform definition of ''Complex Trade'' for purposes of the Linkage Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] As required by Rule 19b–4(f)(6)(iii),[14] the Phlx provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2007–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–09 and should be submitted on or before March 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–3492 Filed 2–27–07; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Proposed Revocation of the Canadian Charter Air Taxi Authority of Flight-Ops International, Inc., D/B/A SkyXpress Airline

AGENCY: Department of Transportation.

ACTION: Notice of Order To Show Cause (Order 2007–2–20), Docket OST–2003–15099.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the Canadian charter air taxi registration of Flight-Ops International d/b/a SkyXpress Airline.

DATES: Persons wishing to file objections should do so no later than March 7, 2007.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–2003–15099 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room PL–401), 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to Order 2007–2–20.

FOR FURTHER INFORMATION CONTACT: Jonathan R. Dols, Office of Aviation Enforcement and Proceedings (C–70, Room 4116), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9342.

Dated: February 20, 2007.

Andrew Steinberg,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 07–880 Filed 2–27–07; 8:45 am]

BILLING CODE 4910–9X–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for Thursday, March 22, 2007 starting at 9 a.m. Daylight Savings Time. Arrange for oral presentations by March 8, 2007.

ADDRESSES: Boeing, 1200 Wilson Blvd, Conference Room 234, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Nicanor Davidson, Office of Rulemaking, ARM–207, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–5174, FAX (202) 267–5075, or e-mail at *nicanor.davidson@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held March 22, 2007.

The agenda for the meeting is as follows:

- Opening Remarks
- FAA Report
- Transport Canada Report
- European Aviation Safety Agency Report
- ARAC Executive Committee Report
- Ice Protection Harmonization Working Group (HWG) Report
- Avionics HWG Report
- Airplane-level Safety Analysis Working Group Report
- Airworthiness Assurance HWG Report
- Any Other Business
- Action Item Review

Attendance is open to the public, but will be limited to the availability of meeting room space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than March 8, 2007. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating by telephone, the call-in number is (202) 366–3920; the Passcode is ''8865.'' To insure that sufficient telephone lines are available, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of your intent to participate by telephone by March 8, 2007. Anyone calling from outside the Washington, DC metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by March 8, 2007, to present oral statements at the meeting. Written statements may be presented to the ARAC at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues (through person referenced in this paragraph) or by providing copies at the meeting. Copies of the document to be presented to ARAC for decision by the FAA may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on February 23, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E7–3505 Filed 2–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–27357]

Commercial Driver's License Advisory Committee

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice of meetings of advisory committee.

SUMMARY: This notice sets forth the schedule for the meetings of the Commercial Driver's License (CDL) Advisory Committee. *Pursuant to section 4135 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)*, the Secretary of Transportation established this advisory committee to study and address current impediments and foreseeable challenges to the commercial driver's license program's effectiveness and measures needed to realize the full safety potential of the commercial driver's license program. Members of the advisory committee will include State motor vehicle administrators, organizations representing government agencies or officials, members of the Judicial Conference, representatives of the trucking industry, representatives of labor organizations, safety advocates, and other significant stakeholders.

DATES: Meetings of the committee will take place on the following dates:

Meeting 1: March 20–22, 2007
Meeting 2: April 17–19, 2007
Meeting 3: May 15–17, 2007

ADDRESSES: The committee's meetings will be held at the Hilton Arlington, 950 North Stafford Street, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Lloyd E. Goldsmith, Transportation Specialist, CDL Division, at (202) 366–2964 (*lloyd.goldsmith@dot.gov*), Federal Motor Carrier Safety Administration, 400 7th Street, SW., Room 8310, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On August 10, 2005, the President signed into law the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (Public Law 109–59, 119 Stat.1144). Section 4135 mandates the establishment of a Commercial Driver's License (CDL) Task Force to study and address current impediments and foreseeable challenges to the commercial driver's license program's effectiveness and measures needed to realize the full safety potential of the commercial driver's license program. The CDL program was established by the Commercial Motor Vehicle Safety Act (CMVSA) of 1986 and is codified at 49 U.S.C. Chapter 313.

To carry out this requirement, FMCSA formed an advisory committee, consistent with the standards of the Federal Advisory Committee Act (FACA). See 71 FR 69605, December 1, 2006. The notice requested applications from persons interested in serving as members of the CDL Advisory Committee not later than January 2, 2007. The applications received by the due date have been evaluated and membership recommendations made to the Secretary of Transportation who will appoint members of the committee.

The statutory timetable for this effort is short. Section 4132 of the SAFETEA–LU specifies that not later than 2 years after the date of enactment of this Act (*e.g.*, by August 10, 2007), the Secretary, on behalf of the task force, shall complete a report of findings and recommendations for legislative, regulatory, and enforcement changes to improve the commercial drivers license program and submit the report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. To meet this deadline, FMCSA will conduct a very compressed schedule of Committee meetings. The FMCSA has scheduled three meetings on the following dates:

Meeting 1: March 20–22, 2007
Meeting 2: April 17–19, 2007
Meeting 3: May 15–17, 2007

The meetings of the committee are open to the public. Attendance will be limited by the size of the meeting room. As a general matter, the committee will make one hour available for public comments on the Thursday of each

meeting (March 22 April 19, and May 17) from 1–2 p.m. Individuals wishing to address the committee should sign up on the public comment sign-in sheet before 11:30 a.m. The time available will be reasonably divided among those who have signed up, but no one will have more than 15 minutes. Written comments and reports can be given to the facilitator for distribution to the committee members. Persons wanting to present written materials to the committee should make enough copies for the 15 committee members and the facilitator.

The agenda topics for the meetings will include, but not necessarily be limited to, discussion of the following issues:

1. State enforcement practices;

2. Operational procedures to detect and deter fraud;

3. Needed improvements for seamless information sharing between States;

4. Effective methods for accurately sharing electronic data between States;

5. Adequate proof of citizenship;

6. Updated technology; and

7. Timely notification from judicial bodies concerning traffic and criminal convictions of commercial driver's license holders.

The agenda topics presented in this notice are necessarily very general since the direction and nature of the advisory committee discussions will shape each subsequent meeting. The DOT may issue additional notices, as needed, with respect to changes in the schedule or agenda topics.

Issued on February 21, 2007.

Rose A. McMurray,

Assistant Administrator, Chief Safety Officer.

[FR Doc. E7–3481 Filed 2–27–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Railroad Company

[Waiver Petition Docket Number FRA–2006–26603]

The Union Railroad Company seeks a waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR Part 223 that requires certified glazing for 33 locomotives. The Union Railroad Company is located in Monroeville, PA, and operates primarily as an industrial railroad with less then 20 miles of track, and at speeds not exceeding 20 mph.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 2006–26603) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on February 21, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–3479 Filed 2–27–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2007–27155]

Proposed Sunset of Waivers Granted Under 49 CFR Part 229 and Establishment of Docket for Collection of Waivers and Documents Generated by the Locomotive Safety Standards Working Group

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed sunset and establishment of public docket.

SUMMARY: FRA is notifying the public that waivers granted relative to the provisions of 49 CFR Part 229, Railroad Locomotive Safety Standards, may be affected by potential revisions to the regulation. FRA is requesting that grantees (primarily railroads) submit current waivers for consideration in light of potential revisions to the regulation, and is establishing a docket to collect the waivers along with other documents generated by the Locomotive Safety Standards Working Group (LSSWG) as part of the Railroad Safety Advisory Committee (RSAC) process. Note that this request pertains to waivers from the provisions of 49 CFR Part 229 only, and not to waivers of any other of the regulations administered by FRA.

FOR FURTHER INFORMATION CONTACT: Charles L. Bielitz, Mechanical Engineer, FRA, 1120 Vermont Avenue NW., Mail Stop 25, Washington, DC 20590 (Telephone 202–493–6314), or Michael Masci, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue NW., Mail Stop 10, Washington, DC 20590 (Telephone 202–493–6037).

ADDRESSES: *Submissions:* Submissions related to Docket Number FRA–2007–27155 may be submitted by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submissions on the DOT electronic docket site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001;
- *Hand delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays; or
- *Federal rulemaking* portal: Go to *http://www.regulations.gov.* Follow the online instructions for submissions.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all submissions received will be posted to *http://dms.dot.gov* without change, including any personal information. Please see the general information heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to submitted comments or materials.

Docket: For access to the docket to read background documents or submissions received, go to *http://dms.dot.gov* at any time, or visit PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION: On February 22, 2006, FRA announced it is seeking input through the RSAC for potential revision of the Locomotive Safety Standards contained in 49 CFR Part 229. Although these standards have been the subject of a series of modifications, the basic text of the rule has remained largely unchanged since promulgation in 1980. In section 229.19, titled ''Prior waivers,'' the existing regulation states: ''All waivers of every form and type from any requirement of any order or regulation implementing the Locomotive Inspection Act, applicable to one or more locomotives, except those propelled by steam power, shall lapse on August 31, 1980, unless a copy of the grant of waiver is filed prior to that date with the Office of Safety, RRS–23, Federal Railroad Administration.'' If the standards are modified, FRA foresees including a similar requirement to terminate all Part 229 waivers shortly after issuance of the revised rule, unless they are re-registered with FRA by a similar process. An opportunity to comment on the proposed sunset regulation will be provided at a later time, prior to the issuance of a final rule. To conform with current Safety Board practice that limits relief to a 5-year term or less, all current waivers of 49 CFR Part 229 that are not already term-limited shall be terminated 5 years after re-registration. Termination dates of waivers already term-limited will not be changed. At the end of the 5-year period, the Safety Board may grant a formal request for extension, pursuant to 49 CFR Part 211.

FRA is requesting that grantees submit all current waivers of Federal regulations contained in 49 CFR 229 if there is a need for the waivers to continue. Anticipating the sunset of these waivers, FRA hopes to address ongoing industry needs and maximize the effectiveness of the current potential rulemaking by considering potential revisions in light of current waivers. Where appropriate, FRA (utilizing the RSAC process) will consider whether potential revisions of Part 229 can safely accommodate the situation faced by the railroad without the need for a waiver. Where this is not appropriate, including situations that are too specific to merit a general accommodation, FRA will retain the waivers submitted at this time and forward them into the docket of waivers to be continued beyond the implementation of the potential revisions to 49 CFR Part 229. Such waivers will not need to be resubmitted if a final rule is implemented. Accordingly, railroads and other parties that have waiver(s) of any portion of 49 CFR Part 229 that they wish to extend after adoption of revised Locomotive Safety Standards shall file a copy of the letter granting the waiver, together with a cover letter referencing this docket number, within 90 days of the date of this notice.

This notice establishes docket number FRA–2007–27155 for collection of documents related to the LSSWG's activities. The docket will be utilized to collect copies of granted waivers submitted pursuant to this notice and other documents generated during the RSAC process, making them available to the public.

Anyone is able to search all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 665, Number 7, Pages 19477–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on February 23, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–3448 Filed 2–27–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236, as detailed below.

[Docket Number FRA–2006–26756]

Applicant: Canadian National Railway, Mr. E. L. Harris, Executive Vice President, Operations, 10004–104th Avenue, Floor 24, Edmonton, Alberta T5J 0K2.

Canadian National Railway (CN) seeks relief from the requirements of the rules, standards, and instructions set out in CFR 236.410, as it relates to the requirement for an entering signal or electric switch lock to enter the main track in centralized traffic control territory at a hand-operated switch. CN believes that the precepts of 49 CFR 236.410 are based on an outdated ideology that concerned itself with then-new signal technology, a less-than-robust communication network, and/or rail traffic controller (RTC) system that did not have today's abilities for checking and blocking regarding block occupancy movements. CN believes that other jurisdictions have acknowledged the redundancy of the electric switch lock and provided for their removal and the reliance on the RTC, who is the authority for track occupancy on his or her respective territory. CN therefore requests exemption from the requirements of 49 CFR 236.410 in the territories recently identified as a traffic control system, which was previously identified as ABS/Rule 512B. This exemption would involve approximately 80 hand-operated switches within these areas.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by Docket Number (FRA 2006–26756) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular

business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on February 23, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–3480 Filed 2–27–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236, as detailed below.

[Docket Number FRA–2007–26965]

Applicant: CSX Transportation, Mr. J. Wesley Wheeler, Chief Mechanical Officer, Locomotives, 500 Water Street, Speed Code J–340, Jacksonville, Florida 32202.

CSX Transportation, Inc. (CSXT) seeks relief from the requirements of the rules, standards, and instructions set out in 49 CFR 236.586, to the extent that a visual inspection not be required as part of the daily or after-trip test on locomotives equipped with microprocessor equipment during a proposed test period. The proposed test period would have the participation of CSXT, FRA, Cab Signal Original Equipment Manufacturer's, Brotherhood of Locomotive Engineers and Trainmen, and the United Transportation Union. CSXT believes that the test will demonstrate how the newer systems will allow safe train operation in train control territory without needing to perform a daily visual inspection of the cab signal and train control apparatus. The test is intended to also exhibit how microprocessor-based systems can continuously monitor themselves with onboard self diagnostics and take the appropriate safe action if a failure is detected. During the proposed test period, CSXT will keep these locomotives on a 92-day periodic inspection interval and will not perform daily visual inspections of its cab signal and train control equipment.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by Docket Number (FRA–2007–26965) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, 400 7th Street SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on February 23, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–3450 Filed 2–27–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Saint Louis Metro

[Docket Number FRA–2007–27207]

Saint Louis Metro (Metro), the provider of bus, paratransit, and light rail transit in the St. Louis Metropolitan Area, seeks a permanent waiver of compliance from sections of Title 49 of the CFR for operation of its MetroLink Light Rail over two at-grade rail diamond crossings that constitute a ''limited connection'' with the general railroad system. (See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000). See also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42526 (July 10, 2000).)

MetroLink consists of 44.8 miles of light rail tracks located in St. Louis County and the City of St. Louis, Missouri; and St. Clair County, Illinois, for the purpose of providing rapid transit operations within the St. Louis Metropolitan area. The MetroLink alignment is a double-track light rail alignment running at grade, above grade, below grade, and in tunnels with two-car consists. Revenue hours are from 3:45 a.m. to 1:15 a.m. daily.

MetroLink currently crosses a single existing freight railroad industry lead known as the Grand Freight Diamond, thus constituting a limited connection to the general railroad system. Freight movements are conducted by Metro's contractor, Squaw Creek Southern Railroad, Inc., across this diamond crossing and are temporally separated, occurring only during MetroLink's nonrevenue hours of 1:15 a.m. to 3:45 a.m.

For this limited connection, Metro seeks permanent waiver of compliance from the following Parts of 49 CFR: Part 217—Railroad Operating Rules, Part 219—Control of Alcohol and Drug Use, Part 220—Railroad Communications, Part 221—Rear End Marking Devices, Part 223—Safety Glazing Standards, Part 238—Passenger Equipment Safety Standards, and Part 239—Passenger Emergency Preparedness. Metro offers that it is similarly governed by the System Safety Program Plan as required by the Federal Transit Administration (FTA) and administered by the Missouri Department of Transportation (Momot).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2007–27207) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on February 23, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–3449 Filed 2–27–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No: FTA–2006–25365]

Formula Grants for Other Than Urbanized Areas Program (49 U.S.C. 5311): Notice of Final Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability of Final Circular.

SUMMARY: This notice announces the publication of final guidance in the form of a circular to assist grantees in implementing the Federal Transit Administration (FTA) Formula Grants for Other Than Urbanized Areas Program (commonly referred to as Section 5311). This notice provides a summary of the Section 5311 program circular, and addresses comments received in response to the July 31, 2006, **Federal Register** notice (71 FR 43280) announcing the availability of the proposed circular for comment.

DATES: The effective date of this final circular is April 1, 2007.

AVAILABILITY OF THE FINAL CIRCULAR: You may download the circular from the Department's Docket Management System (*http://dms.dot.gov*) by entering docket number 25365 in the search field. You may also download an electronic copy of the circular from FTA's Web site, at *www.fta.dot.gov.* You may obtain paper copies of the circular by calling FTA's Administrative Services Help Desk, at 202–366–4865.

FOR FURTHER INFORMATION CONTACT: Lorna R. Wilson, Office of Program Management, Federal Transit Administration, 400 Seventh Street, SW., Room 9114, Washington, DC 20590, *phone:* 202–366–2053, *fax:* 202–366–7951, or *e-mail: lorna.wilson@dot.gov.* Legal questions may be addressed to Shauna J. Coleman, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Room 9316, Washington, DC 20590, *phone:* 202–366–4063, fax: 202–366–3809, or *e-mail: shauna.coleman@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Chapter-by-Chapter Analysis
A. Chapter I—Introduction and Background
B. Chapter II—Program Overview
C. Chapter III—General Program Information
D. Chapter IV—Program Development
E. Chapter V—Locally Developed, Coordinated Public Transit-Human Services Transportation Plan
F. Chapter VI—Program Management and Administrative Requirements
G. Chapter VII—State Management Plan
H. Chapter VIII—Intercity Bus
I. Chapter IX—Rural Transit Assistance Program
J. Chapter X—Other Provisions
K. Appendices
Appendix 1.—Implementation of Two-Year Pilot of In-Kind Match for Intercity Bus

I. Background

On July 31, 2006, the Federal Transit Administration (FTA) published a Notice of Proposed Program Guidance and Request for Comments on the proposed revisions to FTA Circular 9040.1E, ''Nonurbanized Area Formula Program Guidance and Grant Application Instructions,'' dated 10–01–98. The proposed circular contained guidance on how to administer the Section 5311 program. The proposed circular also contained summaries of cross-cutting provisions such as Charter Bus, Buy America, Title VI, and EEO requirements. FTA did not seek specific comments on these cross-cutting provisions, however, because these are subjects of separate rulemaking or circular efforts.

The comment period remained open until September 29, 2006. FTA received 17 comments to the docket. FTA reviewed and considered all comments submitted. In addition to changes made in response to comments received, FTA also edited the proposed circular for clarity and accuracy. Based upon comments received, FTA hereby announces issuance of the final circular, Federal Transit Administration (FTA) Circular 9040.1F, ''Nonurbanized Area Formula Program Guidance and Grant Applications Instructions,'' which supersedes the 1998 FTA Circular 9040.1E. FTA reserves the right to make changes to this circular in the future and to update references to requirements contained in other revised or new guidance and regulations that undergo notice and comment procedures without further notice and comment on this circular.

This notice does not contain the final circular, but rather provides a summary of the provisions found within. An electronic version of the circular may be found on the docket, at *http://dms.dot.gov*, docket number FTA–2006–25365, or on FTA's Web site, at *www.fta.dot.gov.* You may obtain paper copies of the circulars by contacting FTA's Administrative Services Help Desk, at 202–366–4865.

II. Chapter-by-Chapter Analysis

A. Chapter I—Introduction and Background

This chapter is a general introduction to FTA to provide an orientation for those readers less familiar with FTA and our programs. FTA intends to include this introduction in all new and revised program circulars for the orientation of readers new to FTA programs. Chapter I also includes definitions.

Six parties submitted comments on this chapter, with some parties offering multiple comments. One commenter thought that the statement ''Grants.gov is information on all Federal grant opportunities'' was misleading because not all Federal grants are included on this Web site. This commenter suggested that FTA provide information concerning who is responsible for updating this Web site.

FTA agrees and revised the final circular to reflect that all competitive discretionary Federal grants are included on Grants.gov. FTA further clarified, in the final circular, that while FTA does not manage Grants.gov, FTA is responsible for posting all FTA competitive grant opportunities. In addition, FTA clarified, in the final circular, that the Department of Health and Human Services officially manages the Grants.gov postings.

Five commenters submitted comments concerning the definitions. Four commenters submitted comments regarding the use of the term ''small urban areas'' throughout the proposed circular. Three of these commenters stated that the inclusion of the term ''small urban areas'' in the definition of ''nonurbanized areas'' was confusing and misleading when FTA proposed using ''small urban areas'' as synonymous with ''nonurbanized areas,'' ''rural and small urban areas,'' and ''rural.'' These commenters proposed that FTA not define small urban areas as synonymous with rural areas. One commenter supported the continued use of the term ''small urban'' in the circular, and believed that its use was consistent with current language. One commenter suggested that FTA more clearly define intercity bus service. Another commenter suggested that FTA consistently define ''mobility management.''

FTA agrees that while the technical use of the term ''small urban'' throughout the circular was correct, we understand that the common use of the terms ''small urban'' and ''small urbanized'' may be confusing. Therefore, FTA revised the definition of ''Other than Urbanized (Nonurbanized) Area,'' in the final circular, to clarify that a nonurbanized area means any area outside of an urbanized area, and includes rural areas and urban areas with populations under 50,000 not included within an urbanized area. Further, FTA added definitions of ''rural area,'' and ''urbanized areas'' for further clarification. In addition, FTA removed the term ''small urban'' throughout the circular and replaced it with the term ''nonurbanized.''

In response to the commenter who suggested that FTA more clearly define intercity bus service, the commenter failed to specify what aspect of the definition was unclear. Therefore, FTA adopts the definition of intercity bus service from the previous versions of the circular and as proposed in the proposed circular. FTA agrees with the commenter who proposed that FTA consistently define ''mobility management.'' Therefore, FTA replaced the proposed definition to make it consistent with the definition of mobility management provided in 49 U.S.C. 5302(a)(1)(L).

B. Chapter II—Program Overview

This chapter replaces the former Chapter I, ''General Overview,'' in Circular 9040.1E. It provides an overview of the Section 5311 program in terms of its statutory authority and program goals. It defines the role of the individual States and FTA, and explains the program's relationship to other FTA-funded programs, as well as its coordination with other Federal programs. It contains the same information as the existing circular, with minor updates.

Three parties submitted comments on this chapter, with some parties offering multiple comments. One commenter asked FTA to provide a definition of ''takedown'' when FTA uses it in relation to the Rural Transportation Assistance Program (RTAP).

FTA agrees with this suggestion and added a definition of ''takedown'' to the definitions section in Chapter I of the final circular.

One commenter suggested that FTA mention, in Chapter II, funding transfers of interrelated FTA grant funding. This commenter further suggested that FTA mention that States may choose to delegate some of their non-metropolitan transportation planning functions to regional planning organizations, in addition to noting that States may choose to suballocate some of their statewide transportation planning funds to Metropolitan Planning Organizations (MPOs). Another commenter suggested that FTA expand the brief descriptions of its other programs in Chapter II to provide comprehensive cross-program guidance to ensure consistency in management and reporting requirements.

FTA disagrees that Chapter II should discuss funding transfers in detail because FTA intended Chapter II to be an overview. FTA provided a detailed discussion of transfers of interrelated FTA grant funding in Chapter III. For the same reason, FTA did not adopt the suggestion that FTA expand the brief descriptions of its other programs in Chapter II to provide comprehensive cross-program guidance. However, FTA revised some program descriptions to emphasize the relationship to the nonurbanized area formula program and referenced the transfer provisions.

One commenter suggested that FTA provide additional guidance, under Section 3(b)(2), State Role in Program Administration, concerning the State's obligation when the Regional Planning Agency makes funding decisions for the nonurbanized area.

In response, FTA added a sentence to Chapter II, Section 5(f) to clarify that the State is responsible for satisfying grantee requirements for the Section 5311 program. Because each State's unique authorizing legislation defines the roles, responsibilities, and authorities of Regional Planning Agencies, each State must establish appropriate controls to monitor subrecipient activities to ensure that all provisions of the Section 5311 program are met. FTA looks to the States, not to Regional Planning Agencies or other subrecipients, to demonstrate program compliance.

Two commenters submitted multiple comments on the Tribal Transit Program. These commenters asked FTA to clarify the State's role and relationship to the Section 5311 program in relation to the Federal Highway Administration's (FHWA's) Indian Reservation Roads (IRR) Program. Specifically, one commenter asked FTA whether a tribe could support its transit program with simultaneous funding from Section 5311 assistance through the State in which it is located, 5311(c)(1) funding directly from FTA, and IRR funding. This commenter also asked FTA

whether tribes could use IRR funds as the non-Federal share of Section 5311 assistance to tribes.

FTA permits a tribe to support its transit program with simultaneous funding from Section 5311 assistance through the State in which it is located, 5311(c)(1) funding directly from FTA, and IRR funding, as long as the tribe uses the funds for costs associated with administering the respective programs.

Regarding the commenter's question of whether State may use IRR funds for the ''non-Federal'' share of Section 5311 assistance to tribes, FTA points out that States may use IRR funds for the non-FTA share. Title 49 U.S.C. 5311(g)(3) allows States to use funds from Federal agencies, other than those of the U.S. Department of Transportation, for the non-FTA share of a Section 5311 grant, but makes a specific exception allowing States to use the Federal lands highway programs for the local share. The FHWA, a U.S. Department of Transportation operating administration, administers IRR funds under the Federal Lands program. Therefore, IRR funds are not ''non-Federal'' funds. They are Federal funds, but they are eligible as local match. To clarify that IRR funds are eligible as local match, FTA added to Chapter III, Section 3(d) of the final circular a statement indicating that IRR funds are an eligible local match.

One commenter suggested that FTA expand Section 6(c) Other Intraagency Coordination to include the following language:

> Federal transit law requires metropolitan planning organizations to coordinate their planning with the activities of other governmental agencies and non-profit organizations that receive Federal financial assistance from sources other than the Department of Transportation to provide non-emergency transportation services. This requirement does not extend to statewide transportation planning activities, but FTA does encourage State participation in interagency efforts, such as coordinated statewide planning of public and human services transportation, and the facilitation or involvement in State rural development councils or other interagency coordinating bodies. States also are reminded that they will be responsible for the selection of nonurbanized Section 5310, 5316, and 5317 projects as derived from locally developed, coordinated public transit-human services transportation plans, and that the creation or use of statewide interagency councils or other bodies may be a successful strategy for reviewing plans and making project selections under these programs.

FTA agrees with the general idea of this recommendation. FTA did not adopt this commenter's proposal verbatim, but FTA expanded Chapter II, Section 6(b) of the final circular to include the following language:

> FTA encourages State DOT participation in interagency efforts, such as coordinated statewide planning of public and human services transportation. Since States are responsible for the selection of nonurbanized Section 5310, 5316, and 5317 projects as derived from locally developed, coordinated public transit-human services transportation plans, the creation or use of statewide interagency councils or other bodies may be a successful strategy for reviewing plans and making project selections under these programs.

C. Chapter III—General Program Information

This chapter consolidates the former Chapters II ''Apportionments'' with Chapter III ''Eligibility''. This revised chapter sets forth the basis for the apportionment of Section 5311 funds including the availability of those funds and the transfer of funds; also, it identifies eligible recipients and expenses, and the traditional Federal/State matching ratio. Although this revised chapter retains much of the content of the first two chapters, it includes several changes required by the Safe Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA–LU). These changes include: (1) A sliding scale that permits a higher Federal share for capital and operating costs for several States based on a formula used by FHWA; (2) an expanded list of eligible capital expenses for crime prevention and security; and (3) the inclusion of Mobility Management as an eligible capital expense.

Nine commenters submitted comments on this chapter, with some parties offering multiple comments.

One commenter suggested that if the provisions of 48 U.S.C. 1469a do not apply to Puerto Rico, FTA should note this in Section 1(e) Consolidation of Grants to Insular Areas. This commenter further asked FTA to address whether or not Section 5307 (Urbanized Area Formula Grant Program) funds attributable to the U.S. Virgin Islands may be part of the consolidated grants to insular areas authorized under 48 U.S.C. 1469a.

In response to the first issue, FTA notes that 48 U.S.C. 1469a does not specify Puerto Rico as a covered insular territory. Therefore, the consolidated grant provisions do not apply to grants to Puerto Rico. Further, FTA declined to note in Chapter III, Section 1(e) that 48 U.S.C. 1469a does not apply to Puerto Rico. FTA explicitly listed the covered insular territories, and does not believe that listing every other uncovered territory in the circular is warranted. In response to the second issue, FTA notes that Section 5307 funding that is attributable to the U.S. Virgin Islands and Guam may be part of the consolidated grants to insular areas authorized under 48 U.S.C. 1469a. FTA added Section 5307 to the list of grant programs in this section and notes that the U.S. Virgin Islands do not receive Section 5311 funds.

Two comments concerned transfers of apportionment under different programs. One commenter asked whether FTA permits States to combine funds available to them for program administration under Section 5311 funds with Sections 5310 (Elderly Individuals and Individuals With Disabilities), 5316 (Job Access and Reverse Commute), and 5317 (New Freedom) into a common program management account, or whether FTA requires States to track each program's State administrative expense separately. Another commenter noted it is not clear why FTA allows a transfer of funds if it is only for ''administrative streamlining of grant making,'' particularly when States must separate and track the transferred funds under the same grant, and asked FTA to provide some examples of this procedure. This commenter further suggested that FTA retain the ability to transfer 5310 funds to 5311 strictly for capital projects, without a separate grant process for the use of those funds.

In response to the first comment, FTA determined that States may combine program administration funds available to them into one administrative account at the State level, so long as the State uses the funds for State costs associated with administering the 5310, 5311, and 5316 programs. However, FTA must still track the funds attributable to each program at the accounting classification code, Activity Line Item (ALI), and Financial Purpose Code level in the respective grants. As the State incurs expenses against the pooled funds for program administration, it can draw down the reimbursement against any grant that has undisbursed program administration funds. In response to the second comment, FTA, upon closer examination, agrees that there is little administrative ease in combining the program in a consolidated grant, because FTA would still require States to separate and track the transferred funds under the same grant. However, a State may transfer funds it allocates to Federally recognized Indian tribes under Section 5310, 5316 or 5317 to Section 5311 to enable FTA to make direct grants to Federally recognized Indian tribes for the selected projects, because the tribes are eligible direct

recipients under Section 5311 but not under the other programs.

In response to the third comment, FTA can no longer allow a State to transfer Section 5310 funds to Section 5311 without first selecting projects eligible under Section 5310. In other words, the State must now use the Section 5310 funds it transfers to Section 5311 only for Section 5310 program purposes. This is a result of a change in the law, FTA can no longer allow the transfer of Section 5310 to Section 5311 to supplement resources available under the nonurbanized formula grant program, as the law previously permitted.

Eight comments concerned Federal Motor Carrier Safety Administration (FMCSA) regulations in relation to feeder bus service. Four commenters noted that information in Chapter III, Section 2(c) and Chapter VIII, Section 9 is conflicting when Chapter III states that operators of interstate service ''may'' be required to comply with FMCSA regulations, and Chapter VIII states that operators of interstate service ''are required'' to comply with FMCSA regulations. These commenters proposed that FTA clarify these statements. Two commenters recommended that FTA's guidance emphasize that rural transit services that feed intercity bus service with meaningful connections can provide that service without any FMCSA regulatory involvement, as long as the rural transit service does not physically cross state lines and does not interline with the intercity bus service. Additionally, two commenters recommended that FTA provide in the circular that a rural transit agency's costs of compliance with FMCSA safety and insurance regulations are eligible for Section 5311(f) funding to the extent that they are incurred in providing eligible feeder service.

FTA agrees with the comments concerning the conflicting language in Chapter III and Chapter VIII. FTA reconciled the conflicting statements by replacing ''may be required'' in Chapter III with ''are required.'' In response to the commenters' suggestions that FTA guidance emphasize that rural transportation services are subject to FMCSA regulation when the rural transportation service crosses state lines or when interlining is involved, Chapter VIII, Section 9 contains this statement. To the extent FMCSA regulations apply beyond this statement, FTA declines to further interpret FMCSA regulations and directs commenters to contact FMCSA Headquarters for further information.

In response to the commenters' suggestion that FTA state in the circular that a rural transit agency's costs of compliance with FMCSA safety and insurance regulations are eligible for Section 5311(f) funding to the extent that they are incurred in providing eligible feeder service, FTA agrees and added language to clarify in Chapter 8, Section 9.

Three commenters submitted concerns about Eligibility Assistance Categories. One commenter noted that the funding derived under Section 5340 (Apportionments based on growing States and high density States formal factors) is a substantial portion for most States' Section 5311 apportionments, and suggested that FTA move the paragraph that refers to Section 5340 to the second paragraph under the subheading of ''Apportionment of Section 5311 Funds.'' One commenter requested that FTA clarify ''capital activities.'' Another commenter suggested that FTA expressly add park and ride lots to the list of eligible capital items.

FTA agrees with the commenter's suggestion concerning Section 5340 and moved that paragraph as suggested. FTA disagrees that the circular should further clarify eligible capital activities. As proposed, Chapter III, Section 2(e)(2) of the proposed circular defines ''capital expenses'' and provides a list of eligible capital expenses. In response to the last commenter, FTA added park and ride lots to Chapter III, Section 2(e)(2) of the final circular.

Four commenters submitted multiple comments concerning Federal/Local matching requirements. Two commenters recommended that FTA retain all of the matching requirements set forth in the draft circular without change. One commenter applauded FTA for its proposal to allow the increased ''sliding scale'' Federal share for Section 5311 assistance in States with high proportions of public lands. This commenter suggested that FTA include a qualifying statement in Section 3(a)(3) regarding whether FHWA is likely to recalculate these sliding scale rates and their qualifying States.

FTA agrees with the first two commenters and retained all matching requirements set forth in the final circular without change. FTA notes that the match provisions in the circular reflect our understanding of Congressional intent. However, FTA notes that technical corrections legislation may be forthcoming which could further clarify SAFETEA–LU provisions on this point. Finally, FTA defers any questions about possible changes to FHWA's rates to FHWA.

One commenter noted that Chapter III (Table 2) is not clear as to whether the 88.53 percent (sliding scale for capital projects) for the State of California covers all capital, including accessible vehicle purchase with 3 percent allowance. Another commenter suggested that FTA name the five specific programs established under the Federal Lands Highway authorization (e.g., Indian Reservation Roads, Park Roads and Parkways, Forest Highways, Public Lands Highways, and Refuge Roads), when FTA discusses the eligibility of Federal Lands Highway funds toward the non-Federal share of Section 5311 grants.

In response to the clarity of Table 2, FTA notes that it allows the recipient the option of using the sliding scale in lieu of the 80 percent match. In addition, FTA notes that a recipient may also use the 90 percent for the actual incremental costs of equipment necessary to comply with the Americans with Disabilities Act (ADA) or the Clean Air Act (CAA) if that calculation proves more advantageous than the sliding scale. FTA added this explanatory language to Chapter III, Section 3(d). While no commenters raised objections regarding a provision in the proposed circular, which stated that States could not use Section 5310 funds received under service agreements as local match for 5311 to the docket, several States subsequently raised this objection to FTA regional staff. FTA reaffirmed and clarified this position, in Chapter III, Section 3(b) of the final circular, based on reading of 49 U.S.C. 5311(g)(3)(A) and 49 U.S.C. 5311(g)(3)(B).

In response to the addition of the eligibility of Federal Lands Highway funds, FTA believes that FHWA is better suited to provide this information. FTA added a reference to Chapter III, Section 3 to direct interested parties to the statutorily defined sources of DOT funds that States can use as local match for Section 5311 projects from the Federal Lands Highway Program.

D. Chapter IV—Program Development

FTA renamed and made minor updates to Chapter IV, including adding a requirement that designated State agencies provide annual Certifications and Assurances to FTA, which was always assumed under the former circular, but is now explicitly stated. FTA also made non-substantive, technical corrections to this chapter for clarity.

E. Chapter V—Locally Developed, Coordinated Public Transit—Human Services Transportation Plan

This chapter replaces the former Chapter V ''Application Instructions,'' which is now attached as Appendix A to the proposed circular. This new Chapter V describes the Locally Developed Coordinated Public Transit—Human Services Transportation Plan (Coordinated Plan) required under three other FTA programs (Sections 5310, 5316, and 5317) and addresses the relationship to that planning process for Section 5311 subrecipients. Although SAFETEA—LU does not require Section 5311 projects to be derived from a local coordinated plan, FTA states in Chapter V the expectation that Section 5311 and 5307 recipients and subrecipients will be included as essential partners or participants in any coordinated planning activities. FTA also revised Chapter V in the final version to include a reference to the statutory requirements for ''maximum feasible coordination'' with transportation assistance by other Federal services.

One commenter submitted multiple comments on this chapter. This commenter expressed concern that the proposed guidance was completely silent on the question of how, or whether FTA would allow incumbent Job Access and Reverse Commute (JARC) projects to continue. This commenter also was concerned about how FTA will allow local Section 5311 and 5307 grantees and subrecipients to provide important transportation services through Sections 5310, 5316, or 5317 directly. The commenter was further concerned that the approaches FTA was considering for these designations and allocations ''will shut the door on many currently effective and many more potentially effective job access, new freedom, or elderly and disabled persons' mobility programs.''

FTA agrees that the proposed circular did not address how FTA will allow local Section 5311 and 5307 grantees and subrecipients to provide important transportation services through Sections 5310, 5316, or 5317 directly. FTA has revised this chapter to include a cross-reference to 5310, 5316, and 5317 program circulars. In addition, FTA directs readers to FTA's proposed JARC circular, which addresses incumbent JARC projects. The **Federal Register** notice accompanying the circular (71 FR 52610, Sept. 6, 2006) and the proposed circular are available on FTA's Web site at *http://www.fta.dot.gov.* FTA will publish the final JARC Circular at a later date.

F. Chapter VI—Program Management and Administrative Requirements

This chapter retains the requirements that were in Chapter VI of Circular 9040.1E, and adds the National Transit Database (NTD) reporting required by SAFETEA–LU.

Nine commenters submitted comments on this chapter, with some commenters submitting multiple comments. One commenter generally applauded the clarity with which FTA presents procurement procedures that States and subrecipients may consider under the Section 5311 program.

One commenter provided comments on the proposed ''Procurement'' section. This commenter suggested that FTA emphasize in Section 5(a) that States may set procurement procedures or requirements that are more restrictive than FTA's guidance, provided that a State's policy does not violate Federal requirements. This commenter further suggested that FTA consider giving States' authority to establish vehicle useful life and replacement standards for vehicles acquired with Section 5309 assistance for use by subrecipients under Section 5310, 5311, 5316, and 5317.

In response to this commenter's first suggestion, FTA does not believe that it needs to add this qualifying statement to Chapter VI, Section 5(a) because this qualifying statement appears in the first sentence of this section. In response to this commenter's second suggestion, FTA believes that this suggestion would be better addressed in the Section 5309 (Capital Investment Grant program) Circular, which is currently in the process of being revised.

One commenter provided a comment on the proposed ''Financial Management'' section. This commenter requested that FTA clarify Section 6(c) regarding the application of accrual accounting to subrecipients.

The common grant rule gives States the right to have the same financial management system for Federal funds they receive that they use for State funds. However, the requirement for accrual accounting is an FTA requirement. FTA requirements as well as common grant rule requirements are passed through to the subrecipient. Therefore, the accrual accounting requirement applies to subrecipients as well.

One commenter took exception on the proposed closeout requirements that require closing out subrecipient grant agreements within 90 days after all funds are expended. This commenter preferred to closeout a subrecipient grant after FTA has reviewed the single audit report and made any adjustments, including repayments, to the grant.

The common grant rule, which is applicable to all recipients and subrecipients, requires the recipient or subrecipient to submit all financial, performance, and other reports required as a condition of the grant within 90 days after the expiration or termination of the grant. As this is a separate regulation not governed by FTA, FTA did not incorporate this commenter's proposal into the final circular.

Seven commenters provided comments on the proposed NTD reporting requirements. One commenter recommended that FTA should keep data collection and reporting requirements to a minimum. This commenter further suggested that data collection and reporting requirements should have a direct purpose to transit performance. Three commenters noted that FTA designed the existing Rural NTD data module for a voluntary pilot program that predates the SAFETEA–LU requirements, and includes data categories that exceed the statutory requirements. These commenters also proposed that FTA eliminate the excess data categories and requirements to avoid unnecessary data collection and reporting.

FTA agrees that 49 U.S.C. 5311(b)(4) does not require some data elements, such as fatalities, that the current form requires. FTA also notes that the current form does not provide for collection of data required by SAFETEA–LU, such as fleet size and type. However, due to timing and funding limitations for the 2006 reporting year, FTA used the existing NTD rural data reporting module, which FTA developed in consultation with the State DOTs. For the FY 2007 reporting cycle, FTA is working with a team of NTD experts, selected State DOTs, and rural and private operators to review data elements and definitions in light of SAFETEA–LU requirements. FTA anticipates data for intercity bus and Tribal transit will be added at this time, though the number of data elements will be kept to a minimum. FTA also agrees with the direct purpose comment, and points out that the one-page, rural form requires the following performance measures: trips, costs, miles, and hours.

Three commenters supported direct reporting of data from rural subrecipients of Section 5311 funds. One of these commenters further suggested that FTA develop the option for States to allow their 5311 subrecipients to directly enter NTD data elements, subject to verification/concurrence by the State and suggested that FTA use, as a model, the Volpe

Center's Drug and Alcohol Management Information System (DAMIS) submission system.

FTA will continue to require the States to submit subrecipient data, and in the short term FTA will continue to require recipients to use the module that FTA and State DOTs developed. While FTA cannot use the Volpe Center's DAMIS submission system for direct reporting by subrecipients as a model at this time, FTA will explore implementing improvements in the reporting software as resources permit in the future. FTA will also explore other alternate means of receiving formatted data from the States.

Four commenters opposed FTA collection of subrecipient NTD data. Two commenters suggested that FTA consider accepting rural data in the aggregate rather than requesting forms for each State's subrecipients. One of these commenters further suggested that FTA discontinue such requests and accept rural transit data on an aggregate statewide level because such reporting is not compelled by statute. This commenter urged FTA to make an express written decision, reflected either in the final program circular or in a **Federal Register** notice, that it will not require the submission of 5311 program data by subrecipient. This commenter further questioned whether FTA provided notice that is legally sufficient to enable it to impose upon Section 5311 recipients a requirement to collect and submit data by subrecipient, at least for FY 2007 and beyond.

FTA is preparing a separate **Federal Register** notice on NTD reporting that will address the 5311 reporting requirements for in SAFETEA–LU for FY 2007, and seek comment on the implementation of rural data collection provisions. Overall, FTA has statutory authority to require recipients to gather and report subrecipients' NTD data to FTA pursuant to 49 U.S.C. Section 5335. Section 5335(a) states that FTA may request and receive appropriate information for the NTD from ''any source,'' and Section 5335(b) states that FTA ''may award a grant under section 5307 or 5311 only if the applicant, and any person that will receive benefits directly from the grant, are subject to the reporting and uniform systems.'' A subrecipient of Section 5311 is a direct beneficiary of the grant and, as such, is subject to providing information for the NTD to the extent FTA requires.

On the issue of collecting subrecipient data in the aggregate, FTA disagrees with the commenter's position. As stated above, 49 U.S.C. 5335(a) permits FTA to ''request and receive appropriate information from any source,'' and 49 U.S.C. 5335(b) subjects ''any person that receives benefits directly from the grant'' to the reporting and uniform systems. In addition, Congress expected that the data collection requirements would be ''tailored to the smaller size of the typical public transportation system in rural areas, while still providing enough information to judge the condition and performance of our Nation's network of rural public transportation systems.'' Conference Report No. 109–203, at 943 (2005). FTA does not believe that aggregate data is ''tailored to the smaller size of the typical public transportation system in rural areas.'' Moreover, FTA does not believe that aggregate data provides ''enough information to judge the condition and performance of our Nation's network of rural public transportation systems.'' Based on 49 U.S.C. 5335 and the Conference Report, FTA will require that States provide individual subrecipient NTD data to FTA.

One of these commenters suggested that FTA add a sentence at the end of the paragraph concerning NTD reporting to read as follows: ''It is the State's responsibility to collect such information from its subrecipients as will be necessary to submit these annual reports to the NTD.''

FTA agrees with the general idea of this sentence, and added the following statement to the end of the Chapter VI, Section 12(e): *''The State agency administering the FTA Formula Program for Non-Urbanized Areas (49 U.S.C. 5311) will be responsible for the data collection and compilation from each Section 5311 subrecipient in the State serving the general public.''*

Two commenters suggested that FTA provide training on the Rural NTD Program requirements and processes. One of these commenters recommended ''in person'' training in addition to online training or telephone help desk assistance.

FTA agrees and is working to provide more training on rural reporting. Currently, most States are using the NTD rural reporting telephone help desk, 703–462–5233. Additionally, FTA anticipates providing an NTD rural training session during the FY 2007 State Programs Meetings, in addition to various trainings throughout the year. FTA will post the training schedule on FTA's public Web site, located at *http://www.fta.dot.gov.* FTA will also post the training schedule on the NTD Program Web site, located at *http://www.ntdprogram.com.* States should frequently check these Web sites for updated training information.

One commenter provided comments on proposed Chapter VI, Section 14, ''FTA Management Review.'' This commenter stated that there have been misunderstandings, or misplaced apprehensions, about ramifications of subrecipient site visits in the context of FTA management reviews. This commenter suggested FTA state that while FTA or its contractors may visit a sampling of subrecipients as part of the State Management Review, FTA does not intend for these visits to validate observations of States' program management practices, or to be compliance reviews of subrecipients. This commenter further suggested that FTA revise the first paragraph of Section 14 to read, ''FTA also conducts more specific compliance reviews of States or their subrecipients in particular areas; for example * * * ''

FTA agrees that there have been misunderstandings, or misplaced apprehensions, about ramifications of subrecipient site visits in the context of FTA management reviews, and therefore, incorporated a modified version of the commenter's suggested language into Chapter VI, Section 14 of the final circular.

G. Chapter VII—State Management Plan

This chapter consists of the previous Circular 9040.1E's Chapter XI, which FTA moved forward in the document to be consistent with the general format for FTA's revised circulars.

One commenter provided multiple comments on this chapter. This commenter generally applauded FTA's encouragement of States to prepare consolidated State Management Plans (SMPs) that encompass Sections 5310, 5316, and 5317, in addition to their Section 5311 program management. This commenter was concerned, however, that FTA does not require SMPs to explain the State's processes for assuring that it considered rural projects in the statewide transportation planning process. This commenter suggests that FTA encourage States to discuss outreach and consultation with local officials and, as appropriate, with Indian tribal governments as part of the Section 5311 management process.

FTA agrees that discussion of the State's approach to outreach and consultation with local officials should be included in the State Management Plan. FTA added clarifying language to Chapter VIII, Section 4 of the final circular.

H. Chapter VIII—Intercity Bus

This chapter retains the same information from Chapter VII of Circular 9040.1E, and adds the SAFETEA–LU

mandated enhanced consultative process requirement. While consultation between a State and intercity bus operators regarding the adequacy of intercity bus service within the State was encouraged under the previous circular, SAFETEA–LU now makes consultation mandatory for any State certifying that intercity bus needs are adequately met.

Ten commenters submitted comments on this chapter, with some commenters providing multiple comments. Two commenters submitted general comments. One of these commenters applauded FTA's efforts to see that States more fully include and consider intercity bus service operators in the development and support of rural transit services. Another commenter expressed concern that the guidance under this section would affect an urban grantee as well as a non-urban grantee, and suggested that FTA consider intercity bus service as public transportation.

On the issue of considering intercity bus transportation as public transportation, FTA does not agree. Title 49 U.S.C. 5302(a)(10) expressly excludes intercity bus transportation from the definition of public transportation. Although, intercity bus transportation is explicitly eligible for assistance under Section 5311(f), the commenter's concern is misplaced. Commuter bus service is public transportation, not intercity bus service, and is eligible for assistance under FTA's Urbanized Area Formula Program. As such, FTA has not incorporated the commenter's suggestion into the final circular.

Three commenters provided multiple comments on the consultation requirement to access intercity bus service. These commenters thought this requirement was too burdensome, and were concerned that the State will be unable to certify that intercity needs are met because private intercity bus operators are reluctant to submit proposals for intercity program funding. Two of these commenters believed that the evaluation of private sector business activities is outside of its scope and authority.

FTA is aware that it may be difficult to obtain proposals for intercity bus projects in areas where the State has identified unmet needs. The statutory provision for certification implies a statewide assessment of intercity bus service that is currently available and an assessment of any existing needs. This is not a new requirement.

On the issue of FTA's scope and authority, FTA notes that 49 U.S.C. 5311(f)(2) requires the chief executive officer to consult with ''affected intercity bus providers.'' Affected intercity bus providers may include private sector providers. In addition, 49 U.S.C. 5311(f)(2) requires the State to certify to FTA that the ''intercity bus service needs of the State are being met adequately,'' if the State will not use the funds to support intercity bus service. Because FTA requires a direct correlation between the consultation process and the result of such certification, States will necessarily have to assess private sector business. Therefore, it is not outside of FTA's scope and authority to require States to assess private sector business activities to the extent that 49 U.S.C. 5311(f)(2) requires.

One commenter was concerned that any proposal related to counting expenditures on intercity bus services outside of a delineated Section 5311(f) project would need to verify that the service does meet the standards for Section 5311(f) participation.

FTA believes that Chapter VIII is clear that intercity bus mobility needs can be met in many ways, including by publicly provided service. FTA agrees that to meet the Section 5311(f) expenditure requirement, a project must meet the standards for 5311(f) participation provided in Chapter VIII of the final circular.

Two commenters suggested that if consultation demonstrates that there are significant unmet intercity bus needs in the State and there are substantial proposals presented to meet those needs, there is no ''direct correlation'' between the process and the result. The commenters suggest that the requirement for certification that there are no unmet bus needs renders the consultation process meaningless. These commenters proposed that when there is no direct correlation between the process and the results, FTA should not accept the certification. Further, these commenters suggested that FTA clarify, in Section 3 or 4, that FTA will reject the certification if it finds that there is no direct correlation between the certification and the results of the consultation process.

FTA agrees that a ''direct correlation'' should exist between the certification processes and consultation results, including any needs assessment. In response, FTA strengthened the language in Chapter VIII, Section 3, and modified the model certification letter in Appendix E. As such, FTA will review letters of certification upon receipt to ensure that a direct correlation exists. FTA will not accept the certification if it is apparent that there is no direct correlation between the certification and the results of the consultation process. FTA will also review the consultation processes and needs assessment during the State Management Review.

Four commenters submitted multiple comments on the proposed consultation process requirements. One commenter suggested that Sections 4(b)(2) and (4) are not clear. Another commenter was concerned that the process, as proposed, was too burdensome.

These commenters were not specific concerning which aspects of the consultation requirements were unclear or burdensome. Therefore, FTA adopted the consultation process for intercity bus service as proposed in the proposed circular.

Two commenters supported the definition of ''consultation'' as defined in the joint FTA/FHWA Metropolitan and Statewide Planning regulation (49 CFR part 613). Specifically, one of these commenters noted that the specific aspects in Section 4(b) undermine the flexibility granted in the planning regulation, and proposed that the consultation requirements of this circular should reflect the requirements of the planning regulation. This commenter further recommended that FTA replace ''must include'' with ''may include'' in Section 4(b) to support flexibility in the approaches that States may take in the consultation process.

FTA retained the definition of ''consultation'' as provided in FTA/FHWA's Statewide and Metropolitan Planning regulation, but also notes that consultation, as it applies to the intercity bus program, must meet specific requirements. FTA disagrees with the proposal that FTA replace ''must include'' with ''may include'' in Section 4(b). FTA believes that the four elements outlined in the guidance are necessary to establish an effective consultation with intercity bus providers and an assessment of the State's needs. FTA further believes the elements are not too prescriptive and allow the State's flexibility in establishing an assessment and consultation process.

Two commenters submitted comments on the proposed suggestions for identifying private intercity carriers. One commenter applauded FTA's comprehensive list of suggested consultation activities and suggested that States may identify the intercity bus network and consultation with its members through State outreach to State-level or multi-State regional associations of motor coach operators. This commenter further suggested consultation activities could include participation, dialogue, and meaningful interactions at the meetings and

conferences of these associations. This commenter also feels that the locally developed, coordinated public transit-human services transportation plans have enough concerns and priorities from their statutory mandates, and to have them become a vehicle for intercity bus industry consultation, as well, strikes the commenter as too burdensome a suggestion. Another commenter suggested that FTA change the wording in 4(c)(b) regarding the use of ''The Bus Industry Directory'' to ''industry directories'' to avoid reference to a particular book that may no longer be published.

FTA agrees with the commenters and encourages States to engage in as many activities as possible to facilitate an effective consultation process. FTA also agrees that the requirement to include an assessment of intercity bus needs in the development of Coordinated Public Transit-Human Service Transportation Plans could indeed become burdensome. However, Section 5311 and 5307 recipients are the ''public transit'' in the Coordinated Public Transit-Human Service Transportation Plan, and FTA expects and encourages their involvement in the development of those plans. To the extent that intercity bus service is an unmet need for low income, elderly, or persons with disabilities, States should include those needs, and strategies to meet those needs, in their coordinated plans. To that extent, the coordinated planning process can be a resource to States in identifying unmet intercity bus transportation needs. On the issue of amending ''The Bus Industry Directory'' to read ''industry directories,'' FTA agrees and incorporated this change accordingly.

Two commenters thought that informing intercity bus carriers of a State's intent to certify was not an appropriate way to start the consultation process because it implies that a State has made a judgment about certification that it should not make prior to consultation. Furthermore, these commenters believed that the proposed Section 4(c)(2)(a) implies that consultation should be limited to those situations where the State is considering certifying, rather than including intercity bus operators in the State rural planning process on an ongoing basis. These commenters recommended that FTA strike the language of Section 4(c)(2)(a) and substitute it with the following language:

> Inform intercity bus carriers of the State's rural planning process and encourage their participation in that process, and where a State is considering possible certification, provide an opportunity to submit comments and/or request a public meeting to identify unmet needs and discuss proposals for meeting those needs.

FTA agrees with these comments and incorporated this language into Chapter VIII, Section 4(c)(2)(a) of the final circular.

Two commenters agreed with FTA's proposal in Section 4(c)(3)(a) concerning the appropriateness for a State to work in partnership with the American Bus Association. However, these commenters suggested that this should not preclude States from working with carriers on an individual basis. These commenters proposed adding ''and/or carriers individually'' after ''Association'' in line two of Section 4(c)(3)(a). Another commenter noted that not all of Greyhound's schedules are listed in the Russell's Guide, and suggested that FTA list Greyhound's Web site as a source for identifying intercity bus carriers and service.

FTA agrees that States should not be precluded from working with intercity bus carriers on an individual basis and incorporated the language ''and/or carriers individually,'' accordingly. On the issue of adding the Greyhound Web site, FTA agrees that while the Russell's Guide may not contain the most current information, the addition of only Greyhound's Web site (and not other intercity carriers' Web sites) is not warranted. FTA, however, added ''Web sites of private intercity bus operators'' in the resources for identifying intercity bus operators in the State.

Three commenters submitted comments concerning eligible activities. One commenter supported the inclusion of FTA's new definition of joint development, and applauded FTA for describing this new eligibility in the ''eligible activities'' section. Two commenters indicated that FTA published proposed guidance on joint development projects, including implementation of the new intercity bus terminal eligibility in the **Federal Register** on September 12, 2006. These commenters suggested that FTA reference that guidance in Section 8 and suggested that FTA correct the last sentence to reflect that the joint development eligibility criterion for intercity bus terminals is ''physical or functional'' relationship to public transportation facilities, not ''physical and functional'' relationship.

FTA agrees that the joint development eligibility criterion for intercity bus terminals is ''physical or functional'' relationship to public transportation facilities, not ''physical and functional'' relationship. FTA published final guidance on joint development on February 7, 2007. Accordingly, FTA added a reference to this document in Section 8.

Two commenters submitted multiple comments concerning feeder service. These commenters recommended that Section 9 make clear that feeder service is only eligible for Section 5311(f) funding if it makes ''meaningful connections with scheduled intercity bus service to more distant points'' by adding ''and which makes meaningful connections with scheduled intercity bus service to more distant points'' at the end of the first sentence of Paragraph 9. These commenters further noted there are many factors (e.g., weather, accidents, change of plans) that can impede a customer's ability to properly schedule a return intercity bus trip with a demand-responsive feeder service, and suggested that FTA add language to Section 9 that encourages feeder services to make regularly scheduled connections with intercity bus services. These commenters also recommended that FTA make clear, in Section 9, that States should also use the same merit based selection process, as outlined in Section 6, for feeder services.

On the issue of adding ''and which makes meaningful connections with scheduled intercity bus service to more distant points'' at the end of the first sentence, FTA agrees and added this language accordingly. On the issue of adding language that encourages feeder services to make regularly scheduled connections with intercity bus services, FTA disagrees. FTA believes that this is a local operational issue and should be resolved at the local level. On the issue of a merit based selection process as applied to feeder service, FTA agrees that States should use the same merit based selection process as outlined in Section 6 and this process should be documented in the State Management Plan.

One commenter submitted comments concerning ADA requirements. This commenter suggested that FTA's explanation of ADA obligations in relation to intercity bus operations was ''too light'' in its listing of ADA obligations. This commenter pointed out other features of accessibility that pertain to public and private intercity bus operators alike, such as, the requirement to provide accommodation to persons with disabilities and to make information on the operation accessible to persons with sensory or cognitive impairments. This commenter asked FTA to clarify whether the ADA ''stand in the shoes'' standard applies to private operators of intercity bus services who

receive public support through Section 5311(f).

On the issue of whether the Section 5311 Circular is ''too light'' in its listing of ADA obligations, FTA believes DOT's ADA regulation is self-explanatory and that there is no need to repeat the regulation at length in this circular. However, FTA revised the final circular to state that while the ADA complementary paratransit provisions may not apply to intercity bus, FTA notes that other relevant requirements of 49 CFR parts 27, 37, and 38 may apply to intercity bus service.

With regard to the ''stand in the shoes'' issue, FTA acknowledges that DOT has proposed changes to 49 CFR 37.23 in an attempt to address the relationship between a public and private entity where the private entity was providing service under a contract or other arrangement, with the ''other arrangement'' taking the form of a grant. FTA provided a discussion on this issue in the section pertaining to Chapter X.

Eight commenters submitted comments on the Federal share requirements. One commenter concurred with the Federal share for this program, and recommended that FTA include the requirement of a 50 percent of net cost Federal share for operations and 80 percent for capital projects and project administration in the final circular. Seven commenters submitted comments supporting the use of verifiable capital costs of the unsubsidized intercity bus network within its borders as local match for a project involving Section 5311(f) services that make meaningful connections to that unsubsidized intercity bus network, when the entity operating the unsubsidized service approves of such use. Two commenters suggested that FTA add the following paragraph at the end of Section 11:

> FTA is aware that the 50 percent local match requirement for operating assistance for intercity bus services is problematic for States attempting to develop networks of intercity bus services since these services are, by definition, intercity, not local services. In order to encourage the development of such networks, FTA will allow a State to use the verifiable capital costs of the unsubsidized intercity bus network within its borders as local match for a project involving Section 5311(f) services that make meaningful connections to that unsubsidized intercity bus network, provided that the entity operating the unsubsidized service approves of such use. In such cases, the project cost will be defined as the net operating cost of the subsidized service plus the capital cost of the unsubsidized intercity bus network and any other local match as may be needed. Section 5311 funds can be used to fund up to 50 percent of that project cost.

Another commenter suggested that the following language be added to Section 11:

> In order to encourage the development of intercity networks, FTA will allow a State to use the verifiable capital costs of the unsubsidized intercity bus network within its borders as local match for a project involving Section 5311(f) services that make meaningful connections to that unsubsidized intercity bus network. In such cases, the project cost will be defined as the net cost of the subsidized service plus the capital cost of the unsubsidized intercity bus network and any other local match as may be needed. Section 5311(f) funds can be used to fund up to 50 percent of that project cost.

FTA agrees in part with the proposal to use verifiable capital costs of the unsubsidized intercity bus network within its borders as local match, and approved a two-year pilot of In-Kind Match for Intercity Bus (''Pilot Program''). This Pilot Program allows States to use the capital costs of private sector intercity-bus service as in-kind match for the operating costs of connecting rural intercity bus feeder service funded under 49 U.S.C. 5311(f). FTA included an Appendix to this notice that outlines the program terms of the Pilot Program.

I. Chapter IX—Rural Transportation Assistance Program

This chapter contains the renumbered Chapter VIII from Circular 9040.1E. Although it makes no significant substantive changes, it reflects the new funding source for Rural Transportation Assistance Program (RTAP) as defined by SAFETEA–LU. Prior to SAFETEA–LU, RTAP was funded out of FTA's Research budget. SAFETEA–LU now funds RTAP with a 2 percent takedown from the Section 5311 program, with 85 percent going to the States for local projects, and 15 percent to be used towards national projects to supplement State projects, such as the maintenance of a National RTAP resource center. This funding method ensures a predictable source of annual funding.

Two commenters submitted multiple comments on this chapter. One commenter applauded FTA for noting that SAFETEA–LU re-named this program from ''Rural Transit Assistance Program'' to ''Rural Transportation Assistance Program.'' This commenter further applauded FTA for its accurate embodiment of SAFETEA–LU's substantive changes to RTAP, and agrees that tribal transit technical assistance is a matter of pressing need, but thinks that it is outside the scope of this circular. This commenter also suggested that FTA update the list of initiatives that parallel the national component of RTAP, such as Project ACTION, the National Technical Assistance Center for Senior Transportation, the National Resource Center for Human Service Transportation Coordination, and the FTA/Labor Department JobLinks initiative.

FTA agreed with this commenter and incorporated a link to other National Technical Initiatives to Chapter 9, Section 6 of the final circular.

Another commenter stated that this section incorrectly indicated how many operators were in Alaska. This commenter suggests that when next reviewing RTAP allocations, that FTA make RTAP apportionments to States according to the population and area formulas already in place for the 5311 program.

At the time of publication of the proposed circular, FTA used information that was readily available; however, we discovered this was not the most current information. FTA apologizes to the State of Alaska. FTA did not receive other comments advising a change in the RTAP formula, and will not be changing the formula at this time.

J. Chapter X—Other Provisions

This chapter combines Circular 9040.1E's Chapter IX ''Civil Rights Requirements'' and Chapter X ''Other Provisions.'' Chapter X of the revised circular incorporates the same text from those two existing chapters. FTA renumbered and reorganized this text. The revised Chapter X also: (1) Expands the public hearing and involvement requirement for capital project planning to conform with SAFETEA–LU; (2) adds standardized language on real property acquisition and relocation assistance; (3) relieves the pre-award and post-deliver audit review requirement for procurements of 20 vehicles or less; (4) amends the Buy America section to reflect SAFETEA–LU changes regarding post-award requests and the right of an adversely affected party to seek FTA review; and (5) adds a new section on safety and security.

Four commenters submitted comments on this chapter, with some commenters submitting multiple comments. One commenter raised the fact that FTA and FHWA are in the process of drafting updated regulations for statewide and metropolitan transportation planning that address the National Environmental Policy Act (NEPA) compliance and environmental protections, in addition to, core aspects of the planning requirements incumbent on States and metropolitan planning organizations. This commenter also

hopes that FTA is taking steps to assure that the Disadvantaged Business Enterprise (DBE) language in the circular comports with DBE rules and guidance that DOT has issued in recent months and years.

On February 14, 2007 FTA and FHWA published the new joint planning regulation. There were no significant changes in the new planning rule that are inconsistent with the more general information in this circular relative to the Statewide or Metropolitan planning process. Members of the public interested in the planning rulemaking may wish to review the docket by going to *http://dms.dot.gov* and entering docket number 22986. FTA agrees with the comment concerning DBE rules and guidance. FTA is taking steps to assure that the DBE language in the circular comports with DBE rules and guidance that DOT has issued.

Three commenters submitted comments on civil rights. One of these commenters noted that FTA is in the process of revising its civil rights circular that addresses a number of issues, including Title VI compliance, environmental justice, and consideration of limited English proficiency, and suggested that FTA reference these issues referenced by this and other program management circulars.

FTA agrees with these comments, but declined to amend the final circular to incorporate changes made in other reference documents until these documents have gone through notice and comment, and have been finalized. Members of the public interested in the transportation for individuals with disabilities rulemaking may wish to review the docket by going to *http://dms.dot.gov* and entering docket number 23227.

Another commenter stated that Chapter X fails to provide a specific reference to the clarification of 49 CFR 37.23 in the Office of the Secretary's Notice of Proposed Rulemaking ''Transportation for Individuals with Disabilities.'' This commenter proposed highlighting this change in the Section 5311 Circular because it affects grants, sub-grants, cooperative agreements, and contracting for services.

FTA declines at this time to provide a specific reference to the clarification of 49 CFR 37.23 in Chapter X of the final circular. With regard to the ''stand in the shoes'' issue, FTA acknowledges that DOT has proposed changes to 49 CFR 37.23 in an attempt to address the relationship between a public and private entity where the private entity was providing service under a contract or other arrangement, with the ''other arrangement'' taking the form of a grant. In other words, under current DOT policy and the proposed rule, Section 5311 subrecipients that are private non-profit agencies providing fixed route public transit service would be required to provide complementary paratransit. Traditional means of financial support for intercity bus, such as vouchers or operating subsidies, would remain covered under 49 CFR 37.37(a), which would not be changed under the proposed rulemaking. According to 49 CFR 37.37(a), a private entity does not become subject to requirements applicable to a public entity simply ''because it receives an operating subsidy from, is regulated by, or is granted a franchise or permit to operate by a public entity.'' The nature of the arrangement between the public entity and the private intercity operator would determine whether Section 37.37 or Section 37.23 applies. In any case, the language likening intercity bus service to commuter service in terms of applicability of the requirement to provide ADA complementary paratransit is still valid and would not be changed by the proposed ADA rulemaking.

Two commenters submitted comments on charter service. One commenter agreed that FTA should not issue any new rules or regulations regarding charter bus service until the negotiated rulemaking advisory committee completes its work. This commenter suggested that FTA rely on its prior charter bus rulings and existing legislation. Another commenter suggested that FTA add a note that it has begun a negotiated rulemaking process concerning its charter service regulations, and the outcome of that rulemaking, when completed, likely will result in changes to this circular's charter service language.

FTA agrees, and will rely on the existing regulations. However, FTA can supplement the existing regulations with the language in SAFETEA–LU to the extent the regulations do not conflict. In the interim, recipients can forward any charter issues regarding a particular fact scenario to the regions. FTA further suggests that interested parties follow the rulemaking proceedings by going to *http://dms.dot.gov* and entering docket number 22657 into the search criteria.

Two commenters suggested that FTA consider adding language to Chapter X, Section 19, ''Safety'' to explain any expectations that FTA has of its Section 5311 recipients and subrecipients in the area of public transit security. One commenter submitted multiple comments concerning safety and/or security. This commenter suggested that FTA add a sentence to Section 19 that reads as follows:

> FTA has entered into a Memorandum of Understanding with the American Association of State Highway and Transportation Officials (AASHTO), the American Public Transportation Association (APTA) and the Community Transportation Association of America (CTAA) that supports the transit industry and Federal commitment to bus safety, and supports a model bus safety program to which all the signatories of this agreement have agreed to subscribe.

FTA agrees, and incorporated the commenter's proposed language. FTA further added the following sentence to the end of the commenter's suggested language: ''This program will also focus on addressing the needs of rural and small urban providers.'' FTA has reserved the right to amend the final circular to incorporate changes, with regard to any expectations that FTA has of its Section 5311 recipients and subrecipients in the area of public transit security, made in other reference documents that have gone through notice and comment, and have been finalized.

K. Appendices

FTA proposed to re-label and reorganize Exhibits A–G of Circular 9040.1E as Appendices A–H of the revised circular. The proposed new Appendix A contained revised application instructions that were formerly contained in Chapter V of Circular 9040.1E. The proposed Appendix B retained the Sample Selection of Projects that was formerly Exhibit A, but FTA proposed amending it to recognize the transfer of funds from the Section 5310, 5316, and 5317 programs. The proposed Appendix C retained the Section 5311 budget information from the former Exhibit B, and added new codes for the Section 5310, 5316, and 5317 programs. FTA proposed adding a new Appendix D to reflect the use of flexible funds under SAFETEA–LU. *FTA proposed to retain the next three appendices without change:* Appendix E retained the sample intercity bus certification from the former Exhibit E with the addition of evidence of consultation; Appendix F proposed to reserve the Section 5333(b) labor protection warranty from the former Exhibit F; and Appendix G retained the Capital Cost of Contracting percentage breakdowns from the former Exhibit G. FTA proposed to add a new Appendix H, listing contact information for FTA's Regional Offices.

Three commenters submitted comments on the Appendices to this circular. One commenter asked whether

the Department of Labor (DOL) and/or FTA will publish the procedures and afford States an opportunity to comment in response to the statement in Appendix A. Section 1h. under Certification of Labor Protective Arrangements that states, ''at the time of this draft, DOL is preparing to revise its procedures for Section 5311.''

In response, FTA would like to clarify that DOL has not yet issued a Notice of Proposed Rulemaking (NPRM), but may in coming months. FTA anticipates that DOL will provide States an opportunity to submit comments on this NPRM. FTA will advise the States how to access the NPRM when DOL issues it.

Two commenters suggested that the following paragraph replace the second paragraph and the second bracketed paragraph in Appendix E of the Revised Guidelines:

The State has conducted an assessment of statewide intercity bus mobility needs between (fill in dates), which dates are no more than four years prior to the date of this certification. What follows is a description of the assessment process and findings: * * * Prior to this certification, as required by 5311(f)(2), the State consulted with affected intercity bus operators. That consultation process contained the four elements required by the circular and involved the following activities: (Description of activities and how they complied with required elements): Considering the State assessment and the results of the consultation process, the basis for the certification that there are no unmet intercity bus needs in the State is (explain in detail).

These commenters believed this language would provide FTA with an initial view of whether a State is complying with the new standards so that it can move quickly when corrective action appears necessary.

FTA agrees and has incorporated these commenters' proposed language into the final circular accordingly. FTA has adopted the remainder of the Appendix as proposed, with minor technical corrections. FTA does not now recommend consolidation of multiple programs into a single grant, but retains the Scope code information for potential use. In the final circular FTA has also added new data fields for subrecipient information in the program of projects to comply with new requirements contained in the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), enacted September 26, 2006.

Appendix 1. Implementation of Two-Year Pilot of In-Kind Match for Intercity Bus

Prior to publication of the proposed circular, FTA had ongoing conversations with intercity bus industry representatives, a private consultant working on intercity bus issues, and a State DOT to explore the possibility of capturing the value of unsubsidized intercity bus service as a source of in-kind local match for intercity bus projects funded with Section 5311(f). Greyhound and the American Bus Association submitted comments to the docket for the revisions to the Section 5311 program circular that reflected the outcome of those preliminary conversations, and several States submitted comments in support of the intercity bus industry's proposal.

On October 20, 2006, FTA initiated a two-year pilot allowing States to use the capital costs of private sector intercity-bus service as in-kind match for the operating costs of connecting rural intercity bus feeder service funded under 49 U.S.C. 5311(f).

Background

Title 49, U.S.C. 5311(f) requires each State to use 15 percent of its annual apportionment under its Section 5311 program to support intercity bus service, unless the Governor certifies that the intercity bus needs of the states are adequately met. SAFETEA–LU strengthened this requirement by requiring consultation with intercity bus operators prior to certification.

In the last several years Greyhound has terminated most of its rural service, but Greyhound and other private operators maintain service between larger cities. Smaller regional carriers and rural transit systems can help support the national network of intercity bus service and meet the mobility needs of rural residents by providing feeder service that connects rural communities to the closest city with intercity bus service.

Several States have conducted comprehensive state intercity bus needs assessments and identified corridors that could be supported by Section 5311(f) funding for feeder service, providing intercity connections to rural communities and increasing ridership and productivity to help sustain the unsubsidized intercity service provided by Greyhound and other operators.

However, even when the State was interested and willing to use Section 5311(f) funds to meet identified needs and the private operator needed and desired the connecting service, lack of sources of local match often impeded implementation of the feeder service.

A consultant working with the State of Washington came up with a creative financing concept, which Greyhound endorsed and promoted to FTA. While FTA rejected the original proposal to use the entire value of the unsubsidized intercity bus network in a State as a form of credit to be awardable for match, FTA continued to work with the advocates to refine the proposal. Several states and industry groups sought FTA's approval of the financing concept in comments submitted to the Docket for the proposed revisions to the Section 5311 program circular. FTA internally discussed the proposal and agreed to test a limited version of the financing concept in a two-year pilot for Section 5311 grants obligated during FY 2007–2008.

In this notice, FTA addressed the financing concept in the preamble but FTA did not incorporate the financing concept in the Circular because FTA is limiting the financing concept to a two-year period pilot. Depending on whether the pilot proves that the financing concept is workable and beneficial, FTA may extend and incorporate it into later iterations of the Section 5311 Circular, or in future legislative proposals.

I. Implamentation Instructions

A. Defining the FTA Assisted Project

To use the capital provided by a private operator as in-kind match, the FTA assisted project must be defined as including both the feeder service and an unsubsidized segment of intercity bus network to which it connects.

B. Costs Allowable As In-Kind Match

To be eligible to be used as in-kind match, a cost must be otherwise allowable under the project. Thus, to be eligible under Section 5311, the costs contributed by the private operator as in-kind match must connect the rural community to further points. Also, since FTA can only fund the net project cost and the private operator is presumed to be collecting at least enough in fares to cover the operating costs of the service, we are only allowing the capital costs of the unsubsidized service to be used as in-kind match. To simplify matters, we will use the percentages allowed in the capital cost of contracting guidance to determine how much of the private operator's total costs are attributable to capital. (e.g., 50% where the operator provides and maintains all the equipment, less if FTA funded equipment is provided.)

C. Simplified Example of a Project

FEEDER SERVICE—RURAL COMMUNITY A TO INTERCITY BUS TERMINAL IN CITY B

Total Operating Costs	$15,000	Service operates 2 round trips per day, 5 days per week. 1000 miles total @ $15/mile.
Less Farebox Revenue	5,000	Based on weekly ridership of 20 passengers who use the feeder to connect with intercity service at point B.
Net Operating costs	10,000	Subsidized by 5311(f).

Note: City B may be either under or over 50,000 in population if the origin in Point A is a non-urbanized area.

CONNECTING SERVICE—FROM INTERCITY BUS TERMINAL IN CITY B TO BIG CITY C

Total Operating Costs	$20,000	Documented fully allocated costs (both capital and operating) of unsubsidized privately operated service—2 trips each day that connect with the feeder service. (ten trips per week) 500 hours of service @ $40/hour. (If there are more trips per day that do not connect with the feeder, those costs aren't counted).
Less Operating Costs	10,000	The operating portion of the fully allocated costs is not allowable as in-kind match because the private operator is not operating at a loss, so farebox revenues are presumed to cover all the operating costs. Capital cost of contracting ratios may be used to determine the percentage of the total unsubsidized cost of the private service attributable to capital—50% if no FTA provided vehicles are used. The remainder is operating costs.
Value of Capital contributed by private operator.	10,000	May be used as In-Kind match.

Note: Both City B and City C are on the route on which the private intercity bus operator provides scheduled service. In this example there is just one destination, but in other cases there may be additional segments of the network included in the calculation—for example, service from B to D as well as B to C.

FTA ASSISTED PROJECT—SERVICE FROM RURAL COMMUNITY A TO BIG CITY C

Operating Deficit Segment A–B	$10,000	Funded by 5311(f)—Federal Share.
Capital Costs Segment B–C	10,000	In-Kind Match—Local Share.
Net Cost of project A–C	20,000	Net Project Cost—included in program of projects and in TEAM Budget.

Note: The example above assumes a 50/50 match ratio for operating assistance. The Federal share may be greater if a State is eligible to use the sliding scale match ratios.

D. Use of Private Capital as In-Kind Match for Subsidized Private Sector Routes or Service Contracted From Private Operator

A contribution of unsubsidized private capital can also be used to provide in-kind match when Section 5311(f) funds are used to subsidize an unprofitable rural intercity bus route that might otherwise be discontinued by the private operator. Section 5311(f) funds can be used to pay for the operating deficit and the local match can come from the capital costs contributed by the private operator. Alternatively, a State (or local transit agency) can contract with a private operator to provide rural intercity bus service, and pay for the operating deficit with Section 5311(f) funds, with the private operator providing in-kind match in the form of the value of the unsubsidized capital portion of the contracted service.

E. Excess or Insufficient In-Kind Match

If there is excess in-kind match available from the value of the capital costs, it cannot be used to increase the Federal share above the actual operating deficit of the project. In the simplified example above, if the capital costs of the connecting service were $12,000, the Federal share of the project provided in Section 5311(f) funds would still be $10,000 because that is what is needed to pay the operating deficit of the feeder service. Only $10,000 of the capital costs are used for in-kind match.

On the other hand, if the value of the unsubsidized capital contribution does not provide sufficient in-kind match to equal the Section 5311(f) funds needed to cover the operating deficit, the State or local agency has to produce the difference in cash. In the simplified example above, if the capital costs of the unsubsidized service were only $8,000, the $10,000 operating deficit of the feeder service could be paid with $8,000 in Section 5311(f) funds and $2,000 in cash from other sources.

F. Period of Availability of the In-Kind Match

Once included in an approved grant obligated within the two-year pilot period, the capital contribution described in the application may be used as in-kind match until the Federal share is fully expended.

G. Documentation Required in State's Application for Section 5311

When applying to use the unsubsidized capital as in-kind match, the State must provide supplemental information with its Section 5311 grant application.

1. For each Section 5311(f) project using the match, the State must provide a detailed description of the feeder service and the connecting service, identifying locations served by each, and the connections. Only those runs that actually connect with the feeder service can be used for match. For example, if the private operator makes four trips per day through point B but the feeder service only operates twice daily, only the capital costs of the two daily connecting trips can be used as in-kind match.

2. Itemize the total and net costs of each segment used in the project description (for example A–B and B–C, by actual place names, and level of service.) The value of the in-kind match must be based on the documented fully allocated costs incurred by the private operator in providing the connecting service, with reasonable calculations by methods such as costs per mile, or costs per hour. Capital Cost of Contracting percentages may be used to determine the amount of fully allocated costs attributable to capital, unless the operator can provide documentation that the capital costs (including preventive maintenance) are higher. The detailed information may be presented in table form, as in the simplified example above.

3. If the capital costs do not provide sufficient match for the entire operating deficit of the feeder service, additional cash match is required, and should be documented in the application.

4. The application should include documentation that the private operator has consented to the arrangement, documented the costs of the private service being used for in-kind match, and acknowledged that the private service is part of the FTA project and thus is covered by the labor warranty and other Federal requirements.

H. Regional Review and Processing of Grant Application

When a State applies to use this source of in-kind match during the two-year pilot in FY 2007 or 2008, the FTA regional office will review the documentation to ensure that the project as defined is eligible for Section 5311(f) assistance and that sufficient local match is provided by the in-kind capital contribution to match the operating assistance provided.

I. Assessment of Pilot Project

FTA invites States and industry to comment on the implementation of the pilot as it proceeds. Observations about any procedural issues and reflections on the impact of the pilot in increasing the rural intercity bus connections are welcome at any time. FTA particularly invites you to submit an assessment on the two-year pilot in July, 2008, when FTA expects to consider whether to extend or terminate the pilot.

Issued in Washington, DC, this 22nd day of February, 2007.

James S. Simpson,

Administrator, Federal Transit Administration.

[FR Doc. E7–3452 Filed 2–27–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–27337]

Notice of Receipt of Petition for Decision That Nonconforming 2006–2007 Carrocerias Alcides Cimarron Trailers Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2006–2007 Carrocerias Alcides Cimarron trailers are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2006–2007 Carrocerias Alcides Cimarron trailers that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is March 30, 2007.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(B), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS, and has no substantially similar U.S.-certified counterpart, shall be refused admission into the United States unless NHTSA has decided that the motor vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

US SPECS of Havre de Grace, Maryland (Registered Importer 03–321) has petitioned NHTSA to decide whether 2006–2007 Carrocerias Alcides Cimarron trailers that were not originally manufactured to conform to all applicable FMVSS are eligible for importation into the United States. US SPECS contends that these vehicles are eligible for importation under 49 U.S.C. 30141(a)(1)(B) because they have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS. US SPECS submitted information with its petition intended to demonstrate that 2006–2007 Carrocerias Alcides Cimarron trailers are capable of being modified to comply with all applicable standards.

Specifically, the petitioner claims that 2006–2007 Carrocerias Alcides Cimarron trailers are capable of being altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of (a) taillamps; (b) stop lamps; (c) rear turn signal lamps; (d) license plate lamp; (e) rear side-mounted marker lamps; (f) front side-mounted marker lamps; (g) rear clearance lamps; (h) rear identification lamps; (i) front clearance lamps; and (j) front, rear, and side reflex reflectors, on vehicles that are not already so equipped, to ensure compliance with the standard.

Standard No. 119 *New Pneumatic Tires for Vehicles Other than Passenger Cars:* Installation of tires to ensure compliance with the standard.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles Other than Passenger Cars:* Installation of rims and a tire information placard to ensure compliance with the standard.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 22, 2007.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E7–3425 Filed 2–27–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–27371]

Federal Motor Vehicle Safety Standards; Occupant Protection in Interior Impact; Review: 1999–2003 Head Impact Upgrade; Evaluation Report

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a Technical Report reviewing and evaluating its existing Safety Standard 201, Occupant Protection in Interior Impact. The report's title is: HIC Test Results before and after the 1999–2003 Head Impact Upgrade of FMVSS 201.

DATES: Comments must be received no later than June 28, 2007.

ADDRESSES:

Report: The report is available for viewing on line in PDF format at the Docket Management System (DMS) Web page of the Department of Transportation, *http://dms.dot.gov.* Click on ''Simple Search''; type in the five-digit Docket number shown at the beginning of this Notice (27371) and click on ''Search''; that brings up a list of every item in the docket, starting with a copy of this **Federal Register** notice (item NHTSA–2007–27371–1) and a

copy of the report in PDF format (item NHTSA–2007–27371–2).

Comments: You may submit comments [identified by DOT DMS Docket Number NHTSA–2007–27371] by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

You may call Docket Management at 202–366–9324 and visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles Kahane, Chief, Evaluation Division, NPO–131, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–2560. FAX: 202–366–2559. E-mail: *chuck.kahane@dot.gov.*

SUPPLEMENTARY INFORMATION: Safety Standard 201 (49 CFR 571.201) was upgraded in 1995, with a 1998–2002 phase-in, to reduce occupants' risk of head injury from contact during crashes with a vehicle's upper interior, including its pillars, roof headers and side rails, and the upper roof (60 FR 43031). Initially, energy-absorbing materials alone were used to meet the standard; later, some vehicles were also equipped with head-protection air bags. NHTSA does not yet have enough crash data to evaluate the injury-reducing effectiveness of the energy-absorbing materials. However, the agency has conducted 154 matched pairs of impact tests with free-motion headforms in pre- and post-standard vehicles of 15 selected make-models. The Head Injury Criterion, HIC(d) averaged 909.9 in the 154 pre-standard tests and 667.5 in the post-standard vehicles. This is a statistically significant average improvement of 242.4 units of HIC.

How can I influence NHTSA's thinking on this subject?

NHTSA welcomes public review of the technical report and invites reviewers to submit comments about the data and the statistical methods used in the analyses. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement or revise the technical report.

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2007–27371) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management, submit them electronically, or fax them. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System Web site at *http://dms.dot.gov* and click on ''Help'' to obtain instructions. The fax number is 1–202–493–2251.

We also request, but do not require you to send a copy to Charles Kahane, Evaluation Division, NPO–131, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590 (alternatively, FAX to 202–366–2559 or e-mail to *chuck.kahane@dot.gov*). He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit them electronically.

Will the agency consider late comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How can I read the comments submitted by other people?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

A. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

B. On that page, click on ''Simple Search.''

C. On the next page (*http://dms.dot.gov/search/searchFormSimple.cfm/*) type in the five-digit Docket number shown at the beginning of this Notice (27371). Click on ''Search.''

D. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

(Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.)

James F. Simons,

Director, Office of Regulatory Analysis and Evaluation.

[FR Doc. E7–3442 Filed 2–27–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34976]

BNSF Railway Company—Lease and Operation Exemption—Interlocker Plant of the Illinois Central Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 11323 *et seq.*, for BNSF Railway Company, a Class I rail carrier, to lease and operate an interlocker plant and underlying land owned by the Illinois Central Railroad Company (CN), a Class I rail carrier. The interlocker plant, which is situated at or near BNSF's Corwith Yard in the City of Chicago, Cook County, IL, includes all signal appliances and structures thereon and the tower facility, but excludes the tracks, track appurtenances, turnouts and derails of CN and BNSF. The interlocker plant is bounded by: (i) The opposing home signals on the BNSF Joliet, IL-Chicago main line; (ii) the opposing home signals on the CN Joliet-Chicago main line; and (iii) the opposing home signals on the BNSF Joliet-Chicago main line and the BNSF Wye.

DATES: The exemption will be effective on March 5, 2007. Petitions to reopen must be filed by March 15, 2007.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34976 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative: Sidney L. Strickland, Jr., 3050 K Street, NW., Suite 101, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1609. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, e-mail, or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail: *asapdc@verizon.net;* telephone: (202) 306–4004. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 21, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E7–3471 Filed 2–27–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35000]

TRI Railroad, LLC—Acquisition and Operation Exemption—TRI Owners Association

Tri Railroad, LLC (Railroad), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Tri Owners Association (Owners), and operate two track segments as follows: (1) Track A, which extends from point of connection with Union Pacific Railroad Company (UP) at Engineering Station 1+59 near UP milepost 259.20 to Engineering Station 123+74 at the end of track at or near Tahoe/Reno Industrial Center, a distance of approximately 12,215 track feet or 2.31 miles; and (2) Track B, which parallels Track A for a distance of approximately 2,202 track feet or .42 miles, for a total of 14,417 track feet or 2.73 miles, all located in Patrick, Storey County, NV.[1]

Railroad states that, in addition to connecting with UP, the rail line will also connect with BNSF Railway Company (BNSF) at Patrick. According to Railroad, UP owns the connecting trackage at Patrick, but BNSF has trackage rights over UP's trackage and will be able to interchange traffic with Railroad. Railroad further states that, although the line has been owned and operated by Owners as private track, an agreement has been reached where Owners has agreed to convey the line to its affiliated corporation, Railroad, for operation as a common carrier rail line.

Railroad certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

The earliest this transaction may be consummated is the March 18, 2007 effective date of the exemption (30 days after the exemption was filed).

[1] According to Railroad, the line does not have mileposts.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than March 9, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35000, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle St., Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 21, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–3472 Filed 2–27–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6197

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6197, Gas Guzzler Tax.

DATES: Written comments should be received on or before April 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at

Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Gas Guzzler Tax.

OMB Number: 1545–0242.

Form Number: 6197.

Abstract: Internal Revenue Code section 4064 imposes a gas guzzler tax on the sale, use, or first lease by a manufacturer or first lease by a manufacturer or importer of automobiles whose fuel economy does not meet certain standards for fuel economy. The tax is computed on Form 6197. The IRS uses the information to verify computation of tax and compliance with the law.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 605.

Estimated Time per Respondent: 4 hours, 47 minutes.

Estimated Total Annual Burden Hours: 2,892.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 15, 2007.

Glenn Kirkland,

IRS Reports Clearance Office.

[FR Doc. E7–3414 Filed 2–27–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 966

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 966, Corporate Dissolution or Liquidation.

DATES: Written comments should be received on or before April 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Corporate Dissolution or Liquidation.

OMB Number: 1545–0041.

Form Number: 966.

Abstract: Form 966 is filed by a corporation whose shareholders have agreed to liquidate the corporation. As a result of the liquidation, the shareholders receive the property of the corporation in exchange for their stock. The IRS uses Form 966 to determine if the liquidation election was properly made and if any taxes are due on the transfer of property.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 26,000.

Estimated Time per Respondent: 6 hours, 7 minutes.

Estimated Total Annual Burden Hours: 159,120.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 15, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–3416 Filed 2–27–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8703

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8703, Annual Certification of a Residential Rental Project.

DATES: Written comments should be received on or before April 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Annual Certification of a Residential Rental Project.

OMB Number: 1545–1038.

Form Number: 8703.

Abstract: Form 8703 is used by the operator of a residential rental project to provide annual information that the IRS will use to determine whether a project continues to be a qualified residential rental project under Internal Revenue Code section 142(d). If so, and certain other requirements are met, bonds issued in connection with the project are considered ''exempt facility bonds'' and the interest paid on them is not taxable to the recipient.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 6,000.

Estimated Time per Respondent: 6 hours, 32 minutes.

Estimated Total Annual Burden Hours: 39,180.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 15, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–3417 Filed 2–27–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5578

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5578, Annual Certification of Racial Nondiscrimination for a Private School Exempt from Federal Income Tax.

DATES: Written comments should be received on or before *April 30, 2007* to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Certification of Racial Nondiscrimination for a Private School Exempt from Federal Income Tax.

OMB Number: 1545–0213.

Form Number: Form 5578.

Abstract: Every organization that claims exemption from Federal income tax under Internal Revenue Code section 501(c)(3) and that operates, supervises, or controls a private school must file a certification of racial nondiscrimination. Such organizations, if they are not required to file Form 990, must provide the certification on Form 5578. The Internal Revenue Service uses the information to help ensure that the school is maintaining nondiscriminatory policy in keeping with its exempt status.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 3 hours, 44 minutes.

Estimated Total Annual Burden Hours: 3,730.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of

public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 21, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–3418 Filed 2–27–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–200–76]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–200–76 (T.D. 8069), Qualified Conservation Contributions (§ 1.170A–14).

DATES: Written comments should be received on or before April 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION: *Title:* Qualified Conservation Contributions.

OMB Number: 1545–0763.

Regulation Project Number: LR–200–76.

Abstract: Internal Revenue Code section 170(h) describes situations in which a taxpayer is entitled to a deduction for a charitable contribution for conservation purposes of a partial interest in real property. This regulation requires a taxpayer claiming a deduction to maintain records of (1) the fair market value of the underlying property before and after the donation and (2) the conservation purpose of the donation.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, State, local or tribal governments.

Estimated Number of Respondents: 1000.

Estimated Time per Respondent: 1 hour 15 minutes.

Estimated Total Annual Burden Hours: 1,250.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 15, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–3420 Filed 2–27–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, March 12, 2006.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Monday, March 12, 2007 from 10:30 to 11:30 ET via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085, send written comments to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance.

The agenda will include various IRS issues.

Dated: February 15, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–3419 Filed 2–27–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, and West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, March 21, 2007 at 2:30 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, March 21, 2007 at 2:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: *Various IRS issues.*

Dated: February 20, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–3421 Filed 2–27–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted in Atlanta, Georgia. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, March 14, 2007 at 1 p.m. to 5 p.m. ET, Thursday, March 15, 2007 at 8 a.m. to 5 p.m. ET, and Friday, March 16, 2007 at 8 a.m. to 12 Noon ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held. The meeting will be held Wednesday, March 14, 2007 at 1 p.m. to 5 p.m. ET, Thursday, March 15, 2007 at 8 a.m. to 5 p.m. ET, and Friday, March 16, 2007 at 8 a.m. to 12 Noon ET. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. For information or to confirm attendance, notification of intent to attend the meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: *Various IRS issues.*

Dated: February 15, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–3422 Filed 2–27–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Wednesday, March 21, 2007.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday March 21, 2007 from 2 p.m. Pacific Time to 3:30 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Janice Spinks, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Janice Spinks. Miss Spinks can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: *Various IRS issues.*

Dated: February 20, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–3423 Filed 2–27–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, and Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, March 20, 2007, from 11:30 a.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Tuesday, March 20, 2007, from 11:30 a.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: *Various IRS issues.*

Dated: February 20, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–3424 Filed 2–27–07; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Notice; Sunshine Act Meeting

DATE/TIME: Monday, March 12, 2007, 9 a.m.–3:30 p.m.

LOCATION: 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: March 12, 2007 Board Meeting; Approval of Minutes of the One Hundred Twenty-Fifth Meeting (November 28, 2006) of the Board of Directors; Chairman's Report; President's Report; Budget Update; Consideration of Fellowship Applications; Other General Issues.

CONTACT: Tessie F. Higgs, Executive Office, Telephone: (202) 429–3836.

Dated: February 26, 2007.

Patricia P. Thomson,

Executive Vice President, United States Institute of Peace.

[FR Doc. 07–938 Filed 2–26–07; 3:16 pm]

BILLING CODE 6820–AR–M

Federal Register

Wednesday,
February 28, 2007

Part II

Department of the Treasury

Office of the Comptroller of the Currency
Office of Thrift Supervision

Federal Reserve System

Federal Deposit Insurance Corporation

Proposed Supervisory Guidance for Internal Ratings-Based Systems for Credit Risk, Advanced Measurement Approaches for Operational Risk, and the Supervisory Review Process (Pillar 2) Related to Basel II Implementation; Notice

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. OCC–2007–0004]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1277]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2007–06]

Proposed Supervisory Guidance for Internal Ratings-Based Systems for Credit Risk, Advanced Measurement Approaches for Operational Risk, and the Supervisory Review Process (Pillar 2) Related to Basel II Implementation

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision, Treasury (OTS) (collectively, the Agencies).

ACTION: Proposed supervisory guidance with request for public comment.

SUMMARY: The Agencies are publishing for comment three documents that set forth proposed supervisory guidance for implementing proposed revisions to the risk-based capital standards in the United States (New Advanced Capital Adequacy Framework or proposed framework). These proposed revisions, which would implement the ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework,'' published in June 2004 by the Basel Committee on Banking Supervision (Basel II), in the United States, were published in the **Federal Register** on September 25, 2006 as a notice of proposed rulemaking (NPR or proposed rule). The proposed framework outlined in the NPR would require some and permit other qualifying banks to calculate their regulatory risk-based capital requirements using an internal ratings-based (IRB) approach for credit risk and the advanced measurement approaches (AMA) for operational risk (together, the advanced approaches); it also provides guidelines for the supervisory review process (Pillar 2). The proposed supervisory guidance documents provide additional detail for the advanced approaches and the supervisory review process that should help banks satisfy the qualification requirements in the NPR.

DATES: Comments on the three proposed supervisory guidance documents must be submitted on or before May 29, 2007.

ADDRESSES:

OCC: You must include OCC and Docket Number OCC–2007–0004 in your comment. You may submit comments by any of the following methods:

- Agency Web site: *http://www.occ.treas.gov.* Click on ''Contact the OCC,'' scroll down and click on ''Comments on Proposed Regulations.''
- *E-mail address: regs.comments@occ.treas.gov.*
- *Fax:* (202) 874–4448.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Maila Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number for this proposed notice. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide.

You may review comments and other related materials by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- *Viewing Comments Electronically:* You may request e-mail or CD–ROM copies of comments that the OCC has received by contacting the OCC's Public Information Room at: *regs.comments@occ.treas.gov.*
- *Docket:* You may also request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. OP–1277, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments also may be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include ''Basel II Supervisory Guidance'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

OTS: You may submit comments, identified by No. 2007–06 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@ots.treas.gov.* Please include No. 2007–06 in the subject line of the message, and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.

• *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2007–06.

• *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2007–06.

Instructions: All submissions received must include the agency name and document number. All comments received will be posted without change to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: IRB guidance: Fred Finke, Senior Basel Policy Liaison (202–874–4468 or *fred.finke@occ.treas.gov*); AMA guidance: Mark O'Dell, Deputy Comptroller for Operational Risk (202–874–4316 or *mark.odell@occ.treas.gov*); or guidance on supervisory review: Akhtarur Siddique, Lead Expert (202–874–4665 or *akhtarur.siddique@occ.treas.gov*); Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: IRB guidance: Sabeth Siddique, Assistant Director, Credit Risk Section (202–452–3861); AMA guidance: Stacy Coleman, Assistant Director, Operational Risk Section (202–452–2934) or Connie Horsley, Senior Supervisory Financial Analyst, Operational Risk Section (202–452–5239); or guidance on supervisory review: David Palmer, Senior Supervisory Financial Analyst, Credit Risk Section (202–452–2904); Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TTD) only, call (202) 263–4869.

FDIC: IRB guidance: Pete Hirsch, Chief, Large Bank Supervision (202–898–6751 or *phirsch@fdic.gov*), Curtis Wong, Senior Examination Specialist, Planning and Program Development Section (202–898–7327 or *cwong@fdic.gov*); AMA guidance: Mark S. Schmidt, Regional Director (678–916–2189 or *maschmidt@fdic.gov*), Alfred Seivold, Senior Examination Specialist, Large Bank Supervision (415–808–8248 or *aseivold@fdic.gov*); or guidance on supervisory review: Bobby Bean, Chief, Capital Markets Policy Section (202–898–3575 or *bbean@fdic.gov*), Gloria Ikosi, Senior Quantitative Risk Analyst, Capital Markets Policy Section (202–898–3997 or *gikosi@fdic.gov*); Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: IRB guidance: David Tate, Manager, Examination Quality Review (202–906–5717); AMA guidance: Eric Hirschhorn, Senior Financial Economist, Credit Policy (202–906–7350); or guidance on supervisory review: Sonja White, Senior Project Manager, Capital Policy (202–906–7857); Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Agencies issued an NPR on September 25, 2006, [1] which seeks comment on the New Advanced Capital Adequacy Framework that revises the existing general risk-based capital standards as applied to large, internationally active U.S. banks.[2] The public comment period on the NPR closes on March 26, 2007.[3] The proposed framework would implement Basel II in the United States.

As described in the NPR, Basel II sets forth a three-pillar framework encompassing regulatory risk-based capital requirements (Pillar 1); supervisory review of capital adequacy (Pillar 2); and market discipline through enhanced public disclosures (Pillar 3). The proposed framework outlined in the NPR for Pillar 1 would require some and permit other qualifying banks to calculate their regulatory risk-based capital requirements using the IRB approach for credit risk and the AMA for operational risk.[4] The NPR also requires a process for the supervisory review of capital adequacy under Pillar 2, and outlines requirements for enhanced public disclosures under Pillar 3.[5] The NPR describes the qualification process and provides qualification requirements for obtaining supervisory approval for use of the advanced approaches.[6] The qualification requirements are written broadly to accommodate the many ways a bank may design and implement robust credit and operational risk measurement and management systems, and to permit industry practice to evolve.

The proposed supervisory guidance documents are companion guidance to the September 2006 NPR and, as such, are designed to be consistent with the proposed rule and do not address any public comments since the NPR was issued. They provide additional detail that should help banks satisfy the qualification requirements in the NPR. However, the publication of these guidance documents for comment does not imply that the outcome of the NPR has already been determined. As part of the regulatory rulemaking process, the proposed guidance documents are subject to change as needed based on, among other things, the public comments on the guidance and the Agencies' decisions regarding any final rule.

The Agencies believe that the proposed supervisory guidance documents are necessary to supplement the proposed framework with standards to promote safety and soundness and encourage comparability across banks. A bank's primary Federal supervisor will review the bank's framework relative to the qualification requirements in the NPR to determine whether the bank may apply the advanced approaches and has complied with the proposed rule in determining its regulatory capital requirements.

In August 2003, the Agencies issued an advance notice of proposed rulemaking (ANPR), which described the proposed revisions to the existing risk-based capital framework in general terms and sought public comment.[7] The content of the ANPR was based, in large part, on the April 2003 version of the Basel II framework.[8] Contemporaneously with the ANPR, the Agencies also issued for public

[1] See 71 FR 55830 (Sept. 25, 2006).

[2] For simplicity, and unless otherwise noted, the term ''banks'' is used here to refer to banks, savings associations, and bank holding companies. The terms ''bank holding company'' and ''BHC'' refer only to bank holding companies regulated by the Board and do not include savings and loan holding companies regulated by the OTS. For a detailed description of the institutions covered by this notice, refer to part I, section 1, of the NPR.

[3] See 71 FR 77518 (Dec. 26, 2006).

[4] While Basel II provides several approaches for calculating regulatory risk-based capital requirements under Pillara1, only the advanced approaches are proposed for implementation in the United States.

[5] Supervisory expectations pertaining to a bank's public disclosures are not part of this notice.

[6] See part III, section 22 of the NPR.

[7] See 68 FR 45900 (Aug. 4, 2003).

[8] See The New Basel Capital Accord (April 2003) (available at *http://www.bis.org*).

comment two proposed supervisory guidance documents relating to the proposed framework.[9] The first proposed 2003 guidance document described supervisory views on the credit risk measurement and management systems that should be implemented by banks that adopt the IRB approach for computing risk-based capital requirements for corporate credit risk exposures. The second proposed 2003 guidance document provided supervisory views on the operational risk measurement and management systems that should be implemented by banks that adopt the AMA for computing risk-based capital requirements for operational risk, including their operational risk management, data elements, and quantification processes. In October 2004, the Agencies also issued for public comment proposed supervisory guidance on IRB systems for retail credit risk exposures.[10]

The first guidance document presented in this notice sets forth proposed supervisory guidance on IRB systems for credit risk covering the wholesale and retail exposure categories, as well as guidance on the equity and securitization exposure categories (IRB Guidance). Under the IRB framework, banks would use internal estimates of certain risk components as key inputs in the determination of their regulatory risk-based capital requirement for credit risk. As mentioned above, the Agencies previously published proposed supervisory guidance on a bank's IRB systems for corporate and retail exposures in 2003 and 2004, respectively. Since the release of those documents, the Agencies have continued to refine the proposals based on insights gained from public comment and the collective efforts of the interagency IRB working groups. The IRB Guidance updates and consolidates the previously proposed supervisory guidance on corporate and retail exposures. It also provides new guidance on systems a bank may need to differentiate the risk of other credit exposure types, such as equity and securitization exposures, as well as to recognize the benefits of financial collateral in mitigating counterparty credit risk in certain transactions or to use the double default treatment for certain wholesale exposures.

The IRB Guidance is structured somewhat differently from the proposed supervisory guidance issued in 2003 and 2004. Those guidance documents contained four chapters covering corporate ratings and retail segmentation systems, quantification, data management and maintenance, and controls, with discussion of validation and stress testing contained within the rating and segmentation and quantification chapters. The structure of the IRB Guidance generally follows the key components of a bank's advanced systems for credit risk outlined in the NPR. Chapter 1 provides guidance on governance of a bank's overall advanced systems for credit risk. Chapters 2 through 5 cover the components of a bank's IRB systems for wholesale and retail exposures. Chapters 6 and 7 provide guidance on data management and maintenance and the control and validation framework. Chapter 8 provides guidance on stress testing. Chapters 9 through 11 provide guidance on the other systems a bank may need to differentiate risk in certain transactions subject to counterparty credit risk, equity exposures, and securitization exposures.

The IRB Guidance supplements the NPR and provides additional context and detail to help banks meet the qualification requirements in the NPR relevant to a bank's systems and processes for credit risk. Thus, the guidance should be read alongside the NPR to obtain a full perspective of the underlying requirements in the proposed rule. The guidance does not contain additional proposed requirements that are not in the NPR. Chapters 5, 9, 10, and 11, are being issued for the first time and supplement the detailed discussion of those topics in the NPR. Similar to the previously proposed corporate and retail guidance, the IRB Guidance contains supervisory standards (designated with an ''S'') that highlight important elements of a bank's advanced systems for credit risk. The supervisory standards contained in the previously proposed corporate and retail guidance documents have been consolidated and updated and new supervisory standards are proposed.

The second guidance document in this notice sets forth proposed supervisory guidance on the AMA for operational risk (AMA Guidance), updating the proposed AMA Guidance published in 2003. Since the issuance of that proposed AMA Guidance, the Agencies have revised the guidance to clarify issues and simplify, wherever possible, supervisory standards. The revisions are based on insights gained from public comment and the collective efforts of the interagency AMA working group. Under the AMA framework, a bank would rely on internal estimates of its operational risk exposure to generate its regulatory risk-based capital requirement for operational risk. The AMA Guidance provides additional context and detail to help a bank meet the qualification requirements outlined in the NPR relevant to operational risk.

Some of the specific revisions to the AMA Guidance include: (1) Clarifying the roles of a bank's board of directors and management in developing and overseeing the implementation of the bank's AMA framework; (2) expanding standard 5 to address the integration of the bank's operational risk management, data and assessment, and quantification processes into the bank's existing risk management decision-making processes; (3) expanding and clarifying operational risk quantification standards both to reflect the evolution of industry practices, as well as to address supervisory concerns; (4) clarifying supervisory expectations regarding the use of scenario analysis, the key elements used to support operational risk management and measurement, and eligible operational risk offsets (see standards 20, 24, and 26, respectively); (5) adding standard 25 that discusses how frequently a bank must recalculate its estimate of operational risk exposure and its risk-based capital requirement for operational risk; (6) adding standard 27 that a bank must employ a unit of measure that is appropriate for its range of business activities and the variety of operational loss events to which it is exposed; (7) expanding the discussion on dependence modeling in standard 28; and (8) adding a section that discusses a bank's use, in certain limited circumstances, of an alternative quantification system to estimate its operational risk exposure.

The Agencies recognize that a bank required to adopt an AMA framework may have developed an implementation plan using the proposed supervisory standards in the 2003 proposed AMA Guidance to assess its status in meeting the requirements proposed in the ANPR and to determine additional work needed to comply with those requirements. The table below maps the current proposed supervisory standards to those in the 2003 proposed AMA Guidance.

COMPARISON OF CURRENT PROPOSED AMA SUPERVISORY STANDARDS TO THE 2003 PROPOSED AMA SUPERVISORY STANDARDS

Current Proposed Standard Number	2003 Proposed Standard Number
1	1

[9] See 68 FR 45949 (Aug. 4, 2003).

[10] See 69 FR 62748 (Oct. 27, 2004), and 70 FR 423 (Jan. 4, 2005) (correction).

COMPARISON OF CURRENT PROPOSED AMA SUPERVISORY STANDARDS TO THE 2003 PROPOSED AMA SUPERVISORY STANDARDS—Continued

Current Proposed Standard Number	2003 Proposed Standard Number
2	8
3	11
4	2
5	3
6	4
7	5
8	6
9	7
10	9, 10
11	12
12	13, 14
13	15
14	16
15	17
16	18
17	19
18	20
19	21
20	24
21	22
22	23
23	25
24	27
25	New
26	28
27	New
28	29
29	30
30	26
31	31
32	32, 33

The third document sets forth proposed supervisory guidance on the supervisory review process (Pillar 2) in the New Advanced Capital Adequacy Framework. The process of supervisory review described in this proposed guidance document reflects a continuation of the longstanding approach employed by the Agencies in their supervision of banks. However, new methods for calculating regulatory risk-based capital requirements—such as those in the proposed framework—and development of improved risk monitoring and management tools within the industry often bring changes in the relative emphasis placed on the various aspects of supervisory review. This proposed guidance document highlights aspects of existing supervisory review that are being augmented or more clearly defined to support the proposed framework. Under the framework, in determining the extent to which banks should hold capital in excess of regulatory minimums, supervisors would consider the combined implications of a bank's compliance with qualification requirements for regulatory risk-based capital standards, the quality and results of its internal capital adequacy assessment process (ICAAP), and supervisory assessment of its risk management processes, control structure, and other relevant information relating to its risk profile and capital position. The ICAAP (while not mandating the determination of economic capital) should, to the extent possible, identify and measure material risks, which may include (but should not necessarily be limited to) credit risk, market risk, operational risk, interest rate risk, and liquidity risk, and account for concentrations within and among risk types.

The Agencies solicit comment on all aspects of the supervisory guidance documents. In addition, the Agencies believe an important goal for any regulatory capital system is to achieve a measure of consistency in the capital requirements assigned to exposures with similar risk profiles held by different banks. The Agencies seek comment on the extent to which this proposed supervisory guidance will promote that objective.

Paperwork Reduction Act

A. Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995, the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies are requesting comment on a proposed information collection. The Agencies are also giving notice that the proposed collection of information has been submitted to OMB for review and approval.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments should be addressed to:

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail stop 1–5, Attention: 1557–NEW, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: You may submit comments, identified by FR 4199, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.*
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include ''Basel II Supervisory Guidance'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

A copy of the comments may also be submitted to the OMB desk officer for the Agencies: By mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503 or by facsimile to 202–395–6974, Attention: Federal Banking Agency Desk Officer.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition, interested persons may inspect the comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

B. Proposed Information Collection

Title of Information Collection: Proposed Basel II Interagency Supervisory Guidance for IRB, AMA, and the Supervisory Review Process.

Frequency of Response: Event-generated.

Affected Public:

OCC: National banks.

Board: State member banks, bank holding companies, affiliates and certain non-bank subsidiaries of bank holding companies, commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations.

FDIC: Insured nonmember banks and certain subsidiaries of these entities.

OTS: Savings associations and certain of their subsidiaries.

Abstract: The notice sets forth three proposed supervisory guidance documents for implementing proposed revisions to the risk-based capital standards in the United States (New Advanced Capital Adequacy Framework). The proposed guidance documents concern (1) the internal ratings-based systems for credit risk (IRB), (2) the advanced measurement approaches for operational risk (AMA), and (3) the supervisory review process (Pillar II).

The Agencies believe that the documentation, prior approvals, and disclosures included in the proposed IRB and AMA guidance are directly related to the information collection requirements found in the Basel II notice of proposed rulemaking (NPR) published in the **Federal Register** on September 25, 2006 (71 FR 55830). More specifically, the information collection aspects of the proposed IRB and AMA guidance tie to the following sections of the NPR: 21, 22, 44, 53, and 71. The Agencies believe that the burden estimates developed for the NPR adequately cover the additional specificity contained in the proposed IRB and AMA guidance.

For the proposed Pillar II portion of the guidance, the Agencies believe that paragraphs 25, 31, 35, 37, and 42 impose new information collection requirements that were beyond the scope of the burden estimates developed for the NPR. The agencies burden estimates for these additional information collection requirements are summarized below. Note that the estimated number of respondents listed below include both institutions for which the Basel II risk-based capital requirements are mandatory and institutions that may be considering opting-in to Basel II (despite the lack of any formal commitment by most of these latter institutions).

Estimated Burden:

OCC

Number of Respondents: 52.

Estimated Burden per Respondent: 140 hours.

Total Estimated Annual Burden: 7,280 hours.

Board

Number of Respondents: 15.

Estimated Burden per Respondent: 420 hours.

Total Estimated Annual Burden: 6,300 hours.

FDIC

Number of Respondents: 19.

Estimated Burden per Respondent: 420 hours.

Total Estimated Annual Burden: 7,980 hours.

OTS

Number of Respondents: 4.

Estimated Burden per Respondent: 420 hours.

Total Estimated Annual Burden: 1,680 hours.

The proposed supervisory guidance documents follow:

Proposed Supervisory Guidance on Internal Ratings-Based Systems for Credit Risk

Table of Contents

Introduction

I. Purpose
II. Scope of Guidance

Chapter 1: Advanced Systems for Credit Risk

Rule Requirements

I. Overview
II. Governance of Advanced Systems

Chapter 2: Wholesale Risk Rating Systems

Rule Requirements

I. Overview
II. Credit Rating Assignment Techniques
  A. Expert Judgment
  B. Models
  C. Constrained Judgment
  D. Rating Overrides
III. Definition of Default
IV. Independence of the Wholesale Risk Rating Process
V. IRB Risk Rating System Architecture
  A. Two-Dimensional Risk-Rating System
  B. Other Considerations

Chapter 3: Retail Segmentation Systems

Rule Requirements

I. Overview
II. Definition of Default
III. Retail Segmentation Architecture
  A. Criteria for Retail Segmentation
  B. Assignment of Exposures to Retail Segments

Chapter 4: Quantification

Rule Requirements

I. Overview
  A. Stages of the Quantification Process
  B. General Standards for Sound Quantification
II. Probability of Default (PD)
  A. Data
  B. Estimation
  C. Mapping
  D. Application
III. Expected Loss Given Default (ELGD) and Loss Given Default (LGD)
  A. Data
  B. Estimation
  C. Mapping
  D. Application
IV. Exposure at Default (EAD)
  A. Data
  B. Estimation
  C. Mapping
  D. Application
V. Maturity (M)
VI. Special Cases and Applications
  A. Loan Sales
  B. Multiple Legal Entities
Appendix A: Illustrations of the Quantification Process for Wholesale

Portfolios
Appendix B: Illustrations of the Quantification Process for Retail Portfolios

Chapter 5: Wholesale Credit Risk Protection

Rule Requirements

Chapter 6: Data Management and Maintenance

Rule Requirements
I. Overview
II. General Data Requirements
A. Life Cycle Tracking for Wholesale Exposures
B. Rating Assignment Data for Wholesale Exposures
C. Segmentation Data for Retail Exposures
D. Outsourced Activities
E. Asset Sales
III. Data Applications
A. Validation and Refinement
B. Applying IRB System Improvements Historically
C. Calculating Risk-Based Capital Ratios and Reporting to the Public
D. Supporting Risk Management
IV. Managing Data Quality and Integrity
A. Documentation and Definitions
B. Electronic Storage and Access
Appendix A: Data Elements for Wholesale and Retail Exposures
A. Examples of Data Elements for Wholesale Exposures
B. Examples of Data Elements for Retail Exposures
Appendix B: Applying Risk Rating System Improvements Historically

Chapter 7: Controls and Validation

Rule Requirements
I. Overview
II. Reviews of the IRB System
III. Consistency Between IRB Systems and Risk Management Processes
IV. Internal Audit
V. Validation Activities
A. General Validation Requirements
B. Validation Activities
C. Minimum Frequency of Validation

Chapter 8: Stress Testing of Risk-Based Capital Requirements

Rule Requirements

Chapter 9: Counterparty Credit Risk Exposure

Rule Requirements
I. Overview
II. Transactions with Counterparty Credit Risk
III. Definitions
IV. Netting
V. Determination of Eligibility for EAD Adjustment
VI. Methods for Determining EAD
A. Methodologies for Repo-style Transactions and Eligible Margin Loans
B. EAD for OTC Derivative Contracts
C. Internal Models Methodology
VII. Defaulted Counterparties

Chapter 10: Risk-Weighted Assets for Equity Exposures

Rule Requirements
I. Overview
II. Definition of Banking Book Equities
III. Applying the Framework
IV. Using Internal Models for Equity Exposures
V. Quantification of Equity Exposures
A. Reference Data
B. External Data
C. Estimation
VI. Validation of Internal Models for Equity Exposures
VII. Consistency Between Internal Models Used for Equity Exposures and Risk Management Processes

Chapter 11: Securitizations

Rule Requirements
I. Overview
II. Scope of Application
III. General Principles of the Securitization Framework
A. Risk Transference
B. Implicit Support
C. Servicer Cash Advances
D. Clean-up Calls
E. Maximum Capital Requirements for Securitization Exposures
IV. Hierarchy of Approaches
V. IRB Approaches for Securitization Exposures
A. Ratings-Based Approach
B. Internal Assessment Approach
VI. Internal Credit Assessment Process in the IAA
VII. Validation of IAA
A. Supervisory Formula Approach
VIII. Early Amortization Provisions
IX. Data Management Requirements
A. Data Elements
Appendix A: Description of the Supervisory Formula Approach (SFA).
Appendix B: Examples of Data Elements for Securitization Exposures
Attachment A: The NPR Qualification Requirements Related to the IRB Framework
Attachment B: Supervisory Standards
Attachment C: Acronym List

Introduction

I. Purpose

1. This proposed guidance (''guidance''), published jointly by the U.S. Federal banking agencies [1] provides supervisory guidance for U.S. banks, thrifts, and bank holding companies (''banks'') that adopt the Advanced Internal Ratings-Based Approach (''IRB'' or ''IRB framework'') for calculating minimum regulatory risk-based capital (''risk-based capital'') requirements for credit risk under the Basel II capital regulation.

2. This guidance supplements the notice of proposed rulemaking (''NPR'' or ''proposed rule'') published in the **Federal Register** on September 25, 2006.[2] The NPR proposes a regulatory framework within which all banks subject to the proposed rule must develop their IRB systems. The NPR contains qualification requirements that each bank subject to the proposed rule must meet to the satisfaction of its primary Federal supervisor before using its IRB systems to calculate risk-based capital requirements. As stated in the preamble to the NPR, the qualification requirements for these systems are written in broad terms to accommodate the many ways a bank may design and implement a robust internal risk measurement and management system and to permit industry practice to evolve. As a supplement to the NPR, this guidance provides supervisory standards and additional detail on credit risk measurement and management systems that will assist banks in satisfying the requirements in the NPR.

II. Scope of Guidance

3. The focus of this guidance is on wholesale, retail, equity, and securitization exposures. A bank subject to the IRB framework for credit risk in the NPR is required to have systems for determining risk-based capital requirements for its wholesale and retail exposures. The wholesale category includes corporate exposures (for example, exposures to companies and banks, as well as commercial real estate exposures and other types of specialized lending), sovereign exposures, and other non-retail exposures. The retail category includes residential mortgage exposures, qualifying revolving exposures (QRE), and other retail exposures.

4. A bank may also need systems to differentiate the risk of other exposure types, such as equity and securitization exposures, as well as to recognize the benefits of financial collateral in mitigating counterparty credit risk in certain transactions or to use double default treatment for certain wholesale exposures.

5. In aggregation, the IRB systems and other systems for differentiating credit risk are defined in the NPR and in this guidance as a bank's ''advanced systems.'' This guidance covers advanced systems for all of a bank's credit-related exposure types. A bank's advanced systems also include its systems for determining risk-based capital requirements for its operational risk exposures under the proposed Advanced Measurement Approaches (''AMA'') framework, which is the subject of a separate supervisory

[1] The Federal banking agencies are: The Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; the Office of the Comptroller of the Currency; and the Office of Thrift Supervision; and will collectively be referred to as ''the Agencies,'' ''supervisors,'' or ''regulators'' in this guidance.

[2] 71 FR 55830 (Sept. 25, 2006).

guidance document. Certain banks subject to the proposed rule may also be required to calculate risk-based capital requirements for their market risk exposures.

6. As described in separate guidance relating to supervisory review (Pillar 2), in addition to meeting qualification requirements for regulatory risk-based capital standards, a bank must have a rigorous process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital. This process (while not mandating the determination of economic capital) should, to the extent possible, identify and measure material risks, which may include (but should not necessarily be limited to) credit risk, market risk, operational risk, interest rate risk, and liquidity risk, and account for concentrations within and among risk types. One of the main objectives of the internal capital adequacy assessment process is to identify the extent to which banks need to hold capital above regulatory minimums, in order to address risks not adequately captured by minimum regulatory capital requirements.

7. A primary objective of the IRB framework is to make the risk-based capital requirements more sensitive to credit risk. In general, the IRB framework incorporates recent developments in risk management and banking supervision. Under this framework, banks use their own internal risk rating and segmentation systems, as well as their quantification processes, to generate estimates of risk parameters that are inputs to the calculation of the risk-based capital requirements. Data that support accurate and reliable credit risk measurements, as well as rigorous management oversight and controls, including continuous monitoring and validation, are crucial to the prudent application of the IRB framework.

8. This guidance, which is written for supervisors and bankers, describes the important elements and characteristics of a bank's advanced systems for credit risk. Toward this end, this guidance designates certain of those elements as supervisory standards denoted by the prefix ''S.'' These supervisory standards generally implement or clarify the requirements in the NPR and, whenever possible, are principle-based to provide banks with flexibility in implementing the framework. However, when prudential concerns or the need for standardization outweigh the benefits of flexibility, the supervisory standards are specified in greater detail. Furthermore, nothing in this guidance should be interpreted as weakening, modifying, or superseding the safety and soundness principles articulated in the Agencies'' existing statutes, regulations, or guidance. The standards are contained within each chapter with a full compilation of the standards provided in Attachment B.

9. Supervisors will consider this guidance in evaluating banks' advanced systems for credit risk. This guidance assumes that readers are familiar with the proposed framework for calculating risk-based capital requirements for credit risk articulated in the NPR.

10. The conceptual framework outlined in this guidance is not intended to dictate the precise manner by which banks should meet the qualification and other requirements in the NPR. Supervisors will determine compliance with the qualification requirements by evaluating, on an individual bank basis, the extent to which banks meet the substance and spirit of those requirements as they relate to each of the components of a bank's advanced systems for credit risk. However, evaluating each qualification requirement individually is not sufficient to determine a bank's overall compliance. The components of a bank's advanced systems for credit risk should complement and reinforce one another to ensure the accuracy of risk measurements. As part of the supervisory review of a bank's advanced systems, supervisors will analyze the extent to which a bank's advanced systems incorporate the substance and spirit of the standards outlined in this guidance.

11. The structure of this guidance generally follows the key components of the advanced systems for credit risk. Chapter 1 provides guidance on governance of a bank's overall advanced systems. Chapters 2 through 7 cover the components of a bank's IRB systems for wholesale and retail exposures. Chapter 8 provides guidance on stress testing. Chapters 9 through 11 provide guidance on the other systems a bank may need to differentiate risk for certain transactions subject to counterparty credit risk, equity exposures, and securitization exposures and supplements the detailed discussion of these exposure types in the NPR. The data standards and control framework provided in Chapters 6 and 7, respectively, of this guidance generally apply to these other systems as well.

12. To aid the reader, the applicable NPR qualification requirements are listed at the front of each chapter, as well as listed together in Attachment A. Also, certain NPR requirements, such as definitions, are either repeated in this guidance or paraphrased to provide context. However, readers must look to the NPR for the exact proposed rule requirements.

13. What follows is a brief description of each chapter:

Chapter 1: Advanced Systems for Credit Risk

The chapter provides a discussion of the governance and system and process requirements for a bank's advanced systems for credit risk. It also outlines the key components of a bank's advanced systems for credit risk.

Chapter 2: Wholesale Risk Rating Systems

A key component of an IRB system for wholesale exposures is the risk rating system. This chapter describes the design and operation of wholesale risk rating systems. Banks should use the principles outlined in this chapter when designing and operating wholesale risk rating systems.

Chapter 3: Retail Segmentation Systems

A key component of an IRB system for retail credit exposures is the segmentation system, which groups retail exposures into segments according to risk characteristics. This segmentation is the retail portfolio analogue of assigning ratings to exposures in wholesale portfolios. This chapter describes the design and operation of an IRB segmentation system. The retail framework provides banks with substantial flexibility to use the retail segmentation that is most appropriate for their activities.

Chapter 4: Quantification

Another key component of an IRB system is a quantification process that assigns numerical values to the key risk parameters that are used as inputs to the IRB risk-based capital formulas. This chapter provides guidance on the quantification process for wholesale and retail exposures. These risk parameters are probability of default (''PD''), expected loss given default (''ELGD''), loss given default (''LGD''), and exposure at default (''EAD''), and for wholesale exposures only, the effective remaining maturity (''M''). The quantification of these risk parameters should be the result of a disciplined process as described in this chapter. The chapter also includes specific examples for both wholesale rating systems and retail segmentation systems in the two appendices.

Chapter 5: Wholesale Credit Risk Protection

This chapter supplements the detailed discussion of credit risk mitigation in

the NPR by providing guidance on how banks may recognize contractual arrangements for exposure-level credit protection (eligible guarantees and eligible credit derivatives) that transfer risk to one or more third parties. Each of these forms of credit protection must meet certain specific standards of eligibility, as articulated in the NPR, for recognition of the associated risk mitigation.

Chapter 6: Data Management and Maintenance

A bank must have advanced data management and maintenance systems that support credible and reliable risk parameter estimates. This chapter describes how a bank should collect, maintain, and manage the data needed to support the other IRB system components for wholesale and retail exposures (*e.g.*, risk rating and segmentation systems, the quantification process, and validation and other control processes), as well as the bank's broader risk management and reporting needs.

Chapter 7: Controls and Validation

A bank must have a system of controls that ensures that the components of the IRB system are functioning effectively. This chapter provides guidance on the important elements of an effective control environment, including independent review processes, a comprehensive validation process (evaluation of developmental evidence, ongoing monitoring, and outcomes analysis), and an internal audit review and reporting process.

Chapter 8: Stress Testing of Risk-Based Capital Requirements

Banks must conduct stress testing analysis of their advanced systems for credit risk as part of the risk-based capital management process. Stress testing analysis is a means of understanding how economic downturns, as described by stress scenarios, cause migration across ratings or segments and the concomitant change in required risk-based capital. This chapter discusses considerations for conducting stress testing analyses.

Chapter 9: Counterparty Credit Risk Exposure

For certain transactions subject to counterparty credit risk, banks may be allowed to recognize the risk mitigating effect of financial collateral through an adjustment to EAD. This chapter supplements the detailed discussion of counterparty credit risk in the NPR by describing some of the elements of counterparty credit risk mitigation, providing information to aid banks in choosing among the alternative methods to calculate EAD for these transactions, and providing some descriptions and illustrative examples of acceptable modeling practices for the estimation of EAD under the alternative methods.

Chapter 10: Risk-Weighted Assets for Equity Exposures

This chapter supplements the detailed discussion of equity exposures provided in the NPR. It provides guidance on determining risk-based capital requirements for equity exposures held in the banking book for banks subject to the Market Risk Rule and for all equity exposures for banks not subject to the Market Risk Rule.

Chapter 11: Securitization Exposures

A securitization exposure is any exposure whose credit risk reflects the tranching of risk of one or more underlying exposures. This chapter describes the concepts, eligibility, and mechanics associated with applying the three approaches for calculating risk-based capital requirements for securitization exposures.

Chapter 1: Advanced Systems for Credit Risk

Rule Requirements

Part III, Section 22(a)(2): The systems and processes used by a bank for risk-based capital purposes [in the NPR] must be consistent with the bank's internal risk management processes and management information reporting systems.

Part III, Section 22(a)(3): Each bank must have an appropriate infrastructure with risk measurement and management processes that meet the qualification requirements [in the NPR] and are appropriate given the bank's size and level of complexity. Regardless of whether the systems and models that generate the risk parameters necessary for calculating a bank's risk-based capital requirements are located at any affiliate of the bank, the bank itself must ensure that the risk parameters and reference data used to determine its risk-based capital requirements are representative of its own credit risk and operational risk exposures.

Part III, Section 22(j)(1): The bank's senior management must ensure that all components of the bank's advanced systems function effectively and comply with the qualification requirements [in the NPR].

Part III, Section 22(j)(2): The bank's board of directors (or a designated committee of the board) must at least annually evaluate the effectiveness of, and approve, the bank's advanced systems.

Part III, Section 22(k): Documentation. The bank must adequately document all material aspects of its advanced systems.

I. Overview

1. This chapter provides a discussion of the governance and system and process requirements for a bank's advanced systems for credit risk. Board of directors and senior management oversight is critical to ensure that the design and function of the advanced systems are appropriate. Regardless of the specifics of a bank's advanced systems for credit risk, a bank should have a rigorous credit risk management infrastructure that complements these systems.

2. A bank subject to the framework for credit risk in the NPR is required to have an internal ratings-based system (''IRB system'') for determining risk-based capital requirements for its wholesale and retail exposures.

S 1–1 An IRB system must have five interdependent components that enable an accurate measurement of credit risk and risk-based capital requirements.

3. The components of an IRB system are:

- A risk rating and segmentation system that differentiates risk by assigning ratings to individual wholesale obligors and exposures and individual retail exposures to segments;
- A quantification process that translates the risk characteristics of wholesale obligors and exposures and segments of retail exposures into numerical risk parameters that are used as inputs to the IRB risk-based capital formulas. These risk parameters are probability of default (''PD''), expected loss given default (''ELGD''), loss given default (''LGD''), and exposure at default (''EAD''), and for certain wholesale exposures only, the effective remaining maturity (''M'');
- A data management and maintenance system that supports the IRB system;
- Oversight and control mechanisms that ensure the IRB system is functioning effectively and producing accurate results; and
- An ongoing process that validates the accuracy of the risk rating assignments, segmentations, and the risk parameters.

4. If applicable, a bank will also need systems to differentiate risk for other credit exposure types, such as for equity and securitization exposures, as well as to recognize the benefits of financial collateral in mitigating counterparty credit risk in certain transactions or to

use double default treatment for certain wholesale exposures.

5. In aggregation, the IRB system and other systems for differentiating credit risk are defined in the NPR and in this guidance as a bank's ''advanced systems'' for credit risk. Chapters 2 through 7 of this guidance provide supplemental guidance on IRB systems for wholesale and retail exposures. Chapter 8 provides banks with guidance on conducting stress testing analyses of their advanced systems for credit risk. Chapters 9 through 11 cover additional systems a bank may need to have for other credit exposure types.

II. Governance of Advanced Systems

S 1–2 Senior management must ensure that all of the components of the bank's advanced systems for credit risk function effectively and comply with the qualification requirements in the NPR.

6. Senior management should provide ongoing, active oversight of the advanced systems outlined in this supervisory guidance, and articulate the expectations for the technical and operational performance of the advanced systems, including the control framework. To provide effective oversight of the advanced systems, senior management should have extensive knowledge of the advanced systems' policies, underwriting standards, lending practices, account management activities, and collection and recovery practices. Senior management should understand how these factors affect all of the components of the advanced systems.

7. The scope and depth of risk management reports should be sufficient for senior management to monitor the performance of the components of the advanced systems. Detailed reports should include, but are not limited to, the following topics:

- Risk profile by rating for wholesale exposures and by segment for retail exposures;
- Migration across ratings and segments with emphasis on unexpected results;
- Updates to the quantification performance results;
- Validation results;
- Comparative analysis of risk-based and internal capital assessments; and
- Control process assessments.

S 1–3 The board of directors or its designated committee must at least annually evaluate the effectiveness of, and approve, the bank's advanced systems.

8. The board of directors or its designated committee should at least annually ensure that management has appropriate processes and controls in place that support effective advanced systems for credit risk. The board should be provided with information that will enable it to conclude, with reasonable assurance, that management has appropriate processes and controls in place that support effective advanced systems for credit risk. To allow for ongoing monitoring, the board should be provided with reports summarizing the design and performance of the advanced systems. The board's strategic direction and oversight is essential to effective advanced systems.

S 1–4 Each bank (including each depository institution) must ensure that the risk parameters and reference data used to determine its risk-based capital requirements are representative of its own credit risk.

9. Each bank must have an appropriate infrastructure with risk measurement and management processes that meet the qualification requirements in the NPR. Each bank's advanced systems for credit risk should also incorporate the supervisory standards in this guidance. This infrastructure must be appropriate given the bank's size and level of complexity. Regardless of whether the systems and models that generate the risk parameters necessary for calculating a bank's risk-based capital requirements are located at any affiliate of the bank, the bank must ensure that the risk parameters and reference data used to determine its risk-based capital requirements are representative of the bank's credit risk profile.

10. While some organizations may conduct rating, segmentation, quantification, and validation activities on a consolidated basis, each bank subject to the capital requirements for advanced systems must determine its risk-based capital requirements for credit risk on a stand-alone basis and hold its own separate risk-based capital in proportion to the risk exposure of its portfolios. Specifically, the PD, ELGD, LGD, and EAD estimates used to determine risk-based capital levels must be applied to exposures at the exposure or segment level, and risk-based capital requirements for each relevant bank should be based on the proportionate share of each exposure or segment owned by such bank.

11. The board of directors should ensure that senior management at each bank confirm, through periodic evaluations, that risk parameters assigned to its credit exposures are appropriate on a stand-alone basis, and that the control and validation standards in Chapter 7 of this guidance are met.

S 1–5 Banks should establish specific accountability for the overall performance of their advanced systems for credit risk.

12. An individual or group of individuals should be responsible for the design and operation of the overall advanced systems. This accountability includes oversight for all of the components of the advanced systems for credit risk, regardless of which organizational units perform those processes. Authority and key responsibilities should be thoroughly documented and responsible individuals should be held accountable for the performance of the advanced systems.

S 1–6 A bank's advanced systems should be transparent.

13. Banks must adequately document all material aspects of their advanced systems. Adequate documentation will ensure transparency of a bank's advanced systems. A bank demonstrates the transparency of its advanced systems by comprehensively documenting all the systems'' components. Transparency through documentation is important so that third parties, such as a bank's supervisors and auditors, are able to understand, evaluate, and assess the effectiveness of the bank's advanced systems.

14. Documentation should encompass, but is not limited to, the internal risk rating and segmentation systems, risk parameter quantification processes, data collection and maintenance processes, and model design, assumptions, and validation results. The guiding principle governing documentation is that it should support the requirements for the quantification, validation, and control and oversight mechanisms as well as the bank's broader credit risk management and reporting needs. Documentation is critical to the supervisory oversight process.

Chapter 2: Wholesale Risk Rating Systems

Rule Requirements

Part III, Section 22(b)(1): A bank must have an internal risk rating and segmentation system that accurately and reliably differentiates among degrees of credit risk for the bank's wholesale and retail exposures.

Part III, Section 22(b)(2): For wholesale exposures, a bank must have an internal risk rating system that accurately and reliably assigns each obligor to a single rating grade (reflecting the obligor's likelihood of default). The bank's wholesale obligor

rating system must have at least seven discrete rating grades for non-defaulted obligors and at least one rating grade for defaulted obligors. Unless the bank has chosen to directly assign ELGD and LGD estimates to each wholesale exposure, the bank must have an internal risk rating system that accurately and reliably assigns each wholesale exposure to loss severity rating grades (reflecting the bank's estimate of the ELGD and LGD of the exposure). A bank employing loss severity rating grades must have a sufficiently granular loss severity grading system to avoid grouping together exposures with widely ranging ELGDs or LGDs.

Part III, Section 22(b)(4): The bank's internal risk rating policy for wholesale exposures must describe the bank's rating philosophy (that is, must describe how wholesale obligor rating assignments are affected by the bank's choice of the range of economic, business, and industry conditions that are considered in the obligor rating process).

Part III, Section 22(b)(5): The bank's internal risk rating system for wholesale exposures must provide for the review and update (as appropriate) of each obligor rating and (if applicable) each loss severity rating whenever the bank receives new material information, but no less frequently than annually.

I. Overview

1. This chapter describes the design and operation of IRB risk rating systems for wholesale exposures. Banks will have latitude in designing and operating wholesale risk rating systems, subject to four broad principles:

Two-dimensional risk rating system—Banks must be able to make meaningful and consistent differentiations among credit exposures along two dimensions—obligor default risk and loss severity in the event of a default.

Rank order risks—Banks must rank obligors by their likelihood of default, and wholesale exposures (*e.g.*, loans, facilities) by the loss severity expected in the event of default.

Quantification—The risk rating system must be designed to facilitate quantification of obligor ratings in terms of PD and loss severity in terms of ELGD and LGD.

Accuracy—The risk rating system must be designed to ensure that ratings are accurate, so that obligors within a rating grade have similar default risk and wholesale exposures within a loss severity rating grade have similar risk of loss in the event of default.

II. Credit Rating Assignment Techniques

2. In general, a credit rating is a summary indicator of the relative risk of a credit exposure. Credit ratings can take many forms. Regardless of the form, meaningful credit ratings share two characteristics:

- They group exposures to discriminate among possible outcomes.
- They rank the perceived level of credit risk.

3. Banks have used credit ratings of various types for a variety of purposes. Some ratings are intended to rank obligors by risk of default and some are intended to rank wholesale exposures by expected loss, which incorporates risk of default and loss severity. Only risk rating systems that distinguish probability of default from loss given default meet the two-dimensional requirements for the IRB framework.

4. Banks use different techniques, such as expert judgment and models, to assign credit risk ratings. How ratings are assigned is important because different techniques will require different validation processes and control mechanisms to ensure the integrity of the rating system. Validation and controls are discussed in Chapter 7 of this guidance. Some rating assignment techniques are described below; any of these techniques—expert judgment, models, constrained judgment, or a combination thereof—could be acceptable in an IRB system, provided the bank meets the qualification requirements in the NPR and the substance and spirit of the standards outlined in this guidance.

A. Expert Judgment

5. Historically, banks have used expert judgment to assign ratings to wholesale exposures. With this technique, an individual weighs relevant information and reaches a conclusion about the appropriate risk rating. The rater makes informed judgments based on knowledge gained through experience and training.

6. The key feature of expert-judgment systems is flexibility. The prevalence of judgmental rating systems reflects the view that the determinants of default are too complicated to be captured by a single quantitative model. The quality of management is often cited as an example of a risk determinant that is difficult to assess using a quantitative model. In order to foster internal consistency, banks employing expert judgment rating systems should provide narrative guidelines that set out specific quantitative and qualitative rating criteria for each rating grade. However, the expert should decide how much weight to give to each of these criteria in assigning a risk rating grade to an obligor.

7. The flexibility possible in the assignment of judgmental ratings has implications for how the accuracy of the ratings is reviewed. One goal of the ratings review validation process is to confirm that raters followed policy. However, two individuals exercising judgment can use the same information to support different ratings. Thus, individuals reviewing an expert judgment rating system should have sufficient credit expertise and a thorough knowledge of how the bank's rating methodology and policies should be applied.

B. Models

8. In recent years, models have been developed to assign ratings to wholesale exposures. In a model-based approach, inputs are numeric and provide quantitative and qualitative information about an obligor. The inputs are combined using mathematical equations to produce a number that is translated into a categorical rating. An important feature of models is that the rating is perfectly replicable by another party, given the same inputs.

9. Models to assign wholesale ratings typically are statistically derived or based on expert-judgment techniques.

10. Some models are the result of statistical optimization, in which well-defined mathematical criteria are used to choose the model that has the closest fit to the observed data. Numerous techniques can be used to build statistical models; regression is one widely recognized example. Such models are often referred to as scoring models or scorecards, because they produce a single number, or ''score,'' as an output that may be related, for example, to the estimated probability of default of each individual obligor in a portfolio. Regardless of the specific statistical technique used, a knowledgeable independent reviewer should exercise judgment in evaluating the reasonableness of a model's development, including its underlying logic, and the methods used to handle the data.

11. In other cases, banks have built rating models by asking their experts to decide what weights to assign to critical variables in the models. Drawing on their experience, the experts first identify the observable variables that affect the likelihood of default. They then reach agreement on the weights to be assigned to each of the variables. *Unlike* statistical optimization, the experts are not necessarily using clear,

consistent criteria to select the weights attached to the variables. Indeed, expert-judgment model building is often a practical choice when there is not enough data to support a statistical model building. Despite its dependence on expert judgment, this method can be called model-based as long as the resulting equation, most likely with linear weights, is used to rate the credits. Once the equation is set, the model can be replicated, a feature shared with statistically derived models. However, while some banks refer to these types of expert-derived models as ''scorecards,'' they are not scoring models in the conventional use of the term. The term scoring model or scorecard is customarily reserved for a rating model derived using strictly statistical techniques, as described in the preceding paragraph. Generally, independent credit experts use judgment to evaluate the reasonableness of the development of these expert-derived models.

C. Constrained Judgment

12. The alternatives described above present the extremes; in practice, banks use risk rating systems that combine models with judgment. Two approaches are common.

Judgmental systems with quantitative guidelines or model results as inputs. Individuals exercise judgment about risks subject to policy guidelines containing quantitative criteria such as minimum values for particular financial ratios. Banks develop quantitative criteria to guide individuals in assigning ratings, but the criteria may need to be augmented with additional information.

One version of this constrained judgment approach features a model output as one among several criteria that an individual may consider when assigning ratings. The individual assigning the rating is responsible for prioritizing the criteria, reconciling conflicts between criteria, and, if warranted, overriding some criteria. Even if individuals incorporate model results as one of the factors in their ratings, they will exercise judgment in deciding what weight to attach to the model result. The appeal of this approach is that the model combines many pieces of information into a single output, which simplifies analysis, while the rater retains flexibility regarding the use of the model output.

Model-based ratings with judgmental overrides. When banks use rating models, individuals are permitted to override the results under certain conditions and within tolerance levels for frequency. Credit-rating systems in which individuals can override models raise many of the same issues presented separately by pure judgment and model-based systems. If overrides are rare, the system can be evaluated largely as if it is a model-based system. If, however, overrides are prevalent, the system will be evaluated more like a judgmental system.

D. Rating Overrides

13. Regardless of the rating assignment technique in use, banks should define, within their IRB rating system documentation, what constitutes a ratings override. A judgmental override occurs when judgment is used to reject a rating suggested by an objective rating process, such as a model or scorecard. A policy override occurs whenever a rating is assigned in a manner that deviates from the bank's approved rating policy and procedures. Overrides should be specifically identified, monitored, and analyzed to evaluate their impact on the bank's IRB rating system.

III. Definition of Default

S 2–1 Banks must identify obligor defaults in accordance with the IRB definition of default.

14. The consistent identification of defaults is fundamental to any IRB risk rating system. For IRB purposes, a bank's wholesale obligor is in default if, for any wholesale exposure of the bank to the obligor, the bank has:

- Placed the exposure on non-accrual status consistent with the Call Report Instructions or the Thrift Financial Report (''TFR'') and the TFR Instruction Manual;
- Taken a full or partial charge-off or write-down on the exposure due to the distressed financial condition of the obligor; or
- Incurred a credit-related loss of 5 percent or more of the exposure's initial carrying value in connection with the sale of the exposure or the transfer of the exposure to the held-for-sale, available-for-sale, trading account, or other reporting category.

15. Partial charge-offs or write-downs for reasons not related to the distressed financial condition of the obligor do not trigger the default definition. For example, taking a write-down or charge-off to reflect forgiveness of a minor fee for relationship purposes unrelated to financial distress does not trigger the default definition.

16. An obligor in default remains in default until the bank has reasonable assurance of repayment and performance for all contractual principal and interest payments on all exposures of the bank to the obligor (other than exposures that have been fully written-down or charged-off).

IV. Independence of the Wholesale Risk Rating Process

S 2–2 Banks should demonstrate that their wholesale risk rating processes are sufficiently independent to produce objective ratings.

17. Independence in the rating process helps to ensure the integrity of ratings. Banks can promote more independence by implementing a variety of controls and reporting structures. For example, a bank could structure its organizational reporting lines so that the credit approval and the rating assignment decisions are separate from each other. Banks that separate the credit approval process from the rating assignment/review functions are often better able to manage the conflicts that arise between loan volume and credit quality goals. Banks should be aware of the full range of potential conflicts and should develop effective controls to mitigate any conflicts that might arise.

18. However, banks that choose to maintain less separation in organizational reporting lines between credit approval and rating assignment should strengthen controls and consider conducting a post-closing review process. A post-closing review provides an independent review of a rating that has been assigned by those who are not fully independent of the approval process. Any post-closing review, which serves to ensure that the initial rating is appropriate, should be conducted shortly after a credit is originated. The less independent the rating process is, the more rigorous the post-closing review should be.

19. Whether ratings integrity is achieved by creating structural independence in reporting lines or through a combination of other control processes, a bank should demonstrate that its rating processes ensure integrity in ratings throughout the economic cycle.

V. IRB Risk Rating System Architecture

A. Two-Dimensional Risk-Rating System

S 2–3 IRB risk rating systems must have two dimensions obligor default and loss severity corresponding to PD (obligor default), and ELGD and LGD (loss severity).

20. Regardless of the type of rating system(s) used by a bank, the IRB framework imposes some specific requirements. The first requirement is that an IRB risk rating system must be two-dimensional. Banks will assign obligor ratings, which will be associated with a PD. They will also assign either

a loss severity rating(s), which will be associated with ELGD and LGD estimates, or ELGD and LGD estimates directly to each wholesale exposure.

21. The process of assigning the obligor rating and either loss severity ratings or ELGD/LGD values—hereafter referred to as the rating system—is discussed below, and the process of quantifying the PD, ELGD and LGD risk parameters is discussed in Chapter 4.

Obligor Ratings

S 2–4 Banks must assign discrete obligor rating grades.

22. While banks may use models to estimate probabilities of default for individual obligors, the IRB framework requires banks to group the obligors into discrete rating grades. Each obligor rating grade, in turn, must be associated with a single PD.

S 2–5 The obligor rating system must rank obligors by likelihood of default.

23. For example, if a bank uses a rating system based on a 10-point scale, with 1 representing obligors of highest financial strength and 10 representing defaulted obligors, rating grades 2 through 9 should represent groups of ever-increasing risk. In a rating system in which risk increases with the rating grade, an obligor with a rating grade 4 is riskier than an obligor with a rating grade 2, but need not be twice as risky.

S 2–6 Banks must assign an obligor to only one rating grade.

24. As noted above, the IRB framework requires that the obligor rating be distinct from the loss severity rating, which is assigned to the wholesale exposure. The obligor rating should focus on the obligor's ability and willingness to service any obligation and to follow through on any commitments it has with the bank to avoid default. For example, in a 1-to-10 rating system, where risk increases with the number rating grade, an otherwise defaulted obligor with a fully cash-secured transaction should be rated 10—defaulted—regardless of the remote expectation of loss on a specific exposure. Conversely, a nondefaulted obligor whose financial condition warrants the highest investment grade rating should be rated 1, even if the bank's transactions are subordinate to other creditors and unsecured. Since the obligor rating is assigned to the obligor and not to its individual exposures, the bank must ensure that all the exposures to the same obligor bear the obligor's rating grade.

25. At the bottom of any IRB rating scale is at least one default rating grade. Once an obligor is in default on any exposure to the subject bank, the obligor rating grade associated with all of its exposures to that bank will be the default rating grade—even for those exposures of the obligor that have not triggered any element of the definition of default.

Ratings Philosophy and Expected Ratings Migration

S 2–7 A bank's rating policy must describe its ratings philosophy and how quickly obligors are expected to migrate from one rating grade to another in response to economic cycles.

S 2–8 In assigning an obligor to a rating grade, a bank should assess the risk of obligor default over a period of at least one year taking into account the possibility of adverse economic conditions.

26. The term *rating philosophy* is used to describe how obligor rating assignments are affected by a bank's choice of the range of economic, business, and industry conditions that are considered in the rating process. It establishes the bank's philosophy on the manner in which it rates credits and the scenarios under which ratings would be expected to change. In assigning an obligor rating grade, banks must consider both the current risk characteristics of the obligor and the impact that adverse economic, business, and industry conditions could have on the obligor's ability to repay; however, nothing in this guidance requires any specific rating philosophy be employed.

27. Rating grades should group obligors that are expected to share similar default frequencies. The rating assignment for an obligor may be based upon a combination of obligor-specific (idiosyncratic) risk characteristics and the general economic, business, and industry (systematic) risk characteristics or conditions that obligors in the rating may experience.

28. The time horizon used for the assignment of obligors to rating grades should be one year or longer. The obligor rating should reflect the obligor's ability as evidenced by its financial capacity, as well as its willingness to service any obligation and to follow through on any commitments it has with the bank to avoid default. The time horizon chosen for the rating assignment process should be appropriate to the business line or geography for which the respective obligor rating system will be used.

29. That general description, however, still leaves open different possible implementations, depending upon what range of future systematic risk conditions the bank considers when making a rating assignment and the weight given to those conditions. In practice, it appears that most banks have adopted a rating philosophy where an obligor's rating would have some sensitivity to changes in economic conditions. Regardless of the approach taken, banks should document their choice of economic, business, and industry conditions considered in each risk rating system and the expected frequency of rating changes over economic cycles. Such differences have important implications for validation and other aspects of the operation of rating systems, and therefore should be clearly articulated and well understood. A bank should also understand the effects of ratings migration on its risk-based capital requirements and ensure that sufficient capital is maintained during all phases of the economic cycle.

30. A bank's ratings philosophy can be empirically demonstrated through an analysis of how its obligors migrate across rating grades as economic and industry conditions change. While individual obligor ratings may change due to changes in obligor-specific risk characteristics, the average migration observed through time is likely to reveal how sensitive rating assignments are to systematic risk changes. Rating systems in which obligor ratings are more closely linked at a given point in time to particular economic conditions are more likely to be associated with higher overall average rates of rating migration than are other systems. Ratings that respond primarily to obligor-specific (idiosyncratic) changes may be less sensitive to changes in economic and industry conditions, and be more stable throughout the economic cycle.

Obligor-Rating Granularity

S 2–9 Banks must have at least seven discrete obligor rating grades for non-defaulted obligors and at least one rating grade for defaulted obligors.

31. A risk rating system's grades should be sufficiently numerous to ensure that management can meaningfully differentiate risk in the portfolio, without being so numerous that they limit the system's practical use. To determine the appropriate number of rating grades beyond the minimum seven non-default rating grades, each bank should perform its own internal analysis.

S 2–10 Banks should justify the number of obligor rating grades used in its risk rating system and the distribution of obligors across those grades.

32. Some portfolios may have a majority of obligors assigned to only a few of the available rating grades. The mere existence of a concentration of exposures in a rating grade (or rating

grades) does not, by itself, reflect weakness in a rating system. For example, banks focused on a particular type of lending, such as asset-based lending, may lend to obligors having similar default risk. Banks with focused lending activities may use the minimum number of obligor rating grades, while banks with a broad range of lending activities should have more rating grades. However, banks with a high concentration of obligors in a particular rating grade should perform a thorough analysis that supports such a concentration.

33. A concentration of obligors in a rating grade is inappropriate when the financial strength of those obligors varies considerably. If such is the case, the following questions should be answered:

- Are the criteria for each rating grade clear? Are rating criteria too vague to allow raters to make clear distinctions? Ambiguity may be an issue throughout the rating scale or it may be limited to the most commonly used ratings.
- How diverse are the obligors? Is the bank targeting a narrow segment of obligors with homogeneous risk characteristics?
- Are the bank's internal rating categories considerably broader than those of other lenders?

Recognition of Implied Support

S 2–11 Banks may recognize implied support as a rating criterion subject to specific supervisory considerations; however, banks should not rely upon the possibility of U.S. government financial assistance, except for the financial assistance that the U.S. government has legally committed to provide.

34. Implied support is support from a third party that is less than a legally enforceable guarantee. Banks that use implied support as a ratings criterion typically rely on a wide range of policies and procedures for its use. As the impact of implied support arrangements has typically been difficult to quantify, the circumstances under which banks use such arrangements as a ratings criterion should be limited.

35. Supervisors will assess the appropriateness of a bank's usage of implied support as a ratings criterion. A bank should recognize implied support only if the following are true:

- The support is from a parent corporation or sovereign; however, banks should not rely upon the possibility of U.S. government financial assistance, except for the financial assistance that the U.S. government has legally committed to provide;
- The implied support provider is rated investment grade by an NRSRO;
- The implied support is a factor only in assigning an obligor rating, not a loss severity rating;
- The final rating assigned to the obligor reflects greater credit risk than the rating assigned to the implied support provider (the parent corporation or sovereign);
- The bank has considered the magnitude of the rating benefit accorded from the recognition of implied support and the bank has performed and documented comprehensive due diligence to assess the parent corporation or sovereign's willingness and capacity to support the obligor. To assess the willingness to support the obligor, a bank may consider prior situations where the support provider has supported the obligor or other obligors under similar circumstances, extended credit to the obligor at beneficial rates, or made large scale investments of cash or resources in the obligor. To assess capacity, a bank should conduct a thorough analysis of the financial position of the support provider and its ability to provide support including during periods of financial stress;
- There is broad market recognition of the implied support. This can be evidenced through a number of market indicators including situations where the external ratings of the parent corporation and subsidiary are closely linked or the ratings of the parent or sovereign reflect an expectation of support. It could also include evidence derived from traded credit spreads of the parent and subsidiary;
- For a bank whose rating system design incorporates external ratings as a tool in assigning an internal rating, the internal rating does not additionally incorporate implied support when there is evidence that the external rating has already benefited from the assumption of support;
- The bank has established a stand-alone rating for the obligor and continues to monitor the stand-alone rating throughout the term of the exposure;
- The bank's internal tracking processes monitor the dollar volume of credit exposures where implied support is a material consideration in the rating assignment; and
- The provision of significant implied support to a subsidiary or subsidiaries is incorporated into the parent corporation's obligor rating.

Loss Severity Ratings

S 2–12 Banks must have a loss severity rating system that is able to assign loss severity estimates (ELGD and LGD) to each wholesale exposure.

36. The term loss severity rating system refers to the method by which a bank assigns loss severity estimates to wholesale exposures. This assignment can be accomplished through a loss severity rating process or via direct assignment to each wholesale exposure. A wholesale exposure's ELGD and LGD estimates are expressed as a percentage of the estimated EAD of the exposure. Both the ELGD and the LGD are required inputs into the IRB risk-based capital formulas.

S 2–13 Banks should have empirical support for their loss severity rating system and the rating system should be capable of supporting the quantification of ELGD estimates (and LGD estimates if approved for internal estimates).

37. ELGD and LGD analysis is in the early stages of development compared to default risk modeling. Over time, banks' methodologies are expected to evolve. Longstanding banking experience and existing research on ELGD and LGD, while preliminary, suggests that type of collateral (in terms of liquidity and marketability), collateral values, seniority, industry position and whether an exposure is secured or unsecured are the most commonly used predictors of loss severity.

38. Whether a bank assigns ELGD and LGD values directly or, alternatively, rates wholesale exposures and then quantifies ELGD and LGD for the rating grades, the bank should conscientiously identify characteristics that influence ELGD and LGD. Each of the loss severity rating categories should be associated with empirically supported ELGD and LGD estimates. (Even though the grouped exposures have common characteristics and a common expected ELGD and LGD, realized loss severity for individual exposures may vary).

Loss Severity Rating/LGD Granularity

S 2–14 Banks must have a sufficiently granular loss severity rating system to group exposures with similar estimated loss severities or a process that assigns estimated ELGDs and LGDs to individual exposures.

39. While there is no stated minimum number of loss severity ratings, the systems that provide ELGD and LGD estimates must be granular enough to separate wholesale exposures with significantly varying estimated LGDs. For example, a bank using a loss severity rating-scale approach that has credit products with a variety of collateral packages or financing structures should have more ELGD and

LGD rating grades than those banks with fewer options in their credit products.

40. Like obligor rating grades, the mere existence of an exposure concentration in an ELGD or LGD rating grade (or rating grades) does not, by itself, signify a rating system's weakness. However, banks with a high concentration within ELGD and LGD rating grades should perform a thorough analysis that supports such a concentration.

B. Other Considerations

Rating Criteria

S 2–15 Rating criteria should be written, clear, consistently applied, and include the specific qualitative and quantitative factors used in assigning ratings.

41. Each obligor and loss severity rating (including ratings with modifiers such as + or −) should be defined. The definitions should describe all significant quantitative and qualitative ratings criteria used to promote consistent application of risk ratings. The ratings should be sufficiently transparent to allow replication by a third party. This is particularly important in expert-judgment rating systems where establishing the transparency of rating assignments is more challenging. Without clearly defined rating criteria, expert-judgment rating systems are not sufficiently transparent. A risk rating system with vague criteria or one defined only by PDs, ELGDs, or LGDs is neither replicable nor transparent. Transparent criteria promote accurate and consistent ratings within and across business lines and geographies, and permit the rating process to be refined over time.

Use of External Rating Tools

42. Banks may use results from external rating tools, such as vendor default models or agency ratings, as inputs into their internal rating processes for obligors and wholesale exposures. The validation standards in this guidance apply to a bank's use of external rating tools as well as internal ones. Therefore, banks should apply the same level of rigor to their external tools as to their internal tools. In addition, any external rating tool employed should be consistent with the architecture of the bank's IRB rating systems. To verify this consistency, a bank should analyze and understand:

- The predictive ability of the external rating tool;
- The factors and criteria used by the external rating tools to assign ratings; and
- The expected effect of using the external rating tool on the migration of internal ratings.

43. Sole reliance on external rating tools is not appropriate. Every rating tool has limitations, and banks should have a process to ensure that accurate ratings are assigned despite such limitations. How much additional analysis is required will depend on the exposure's rating, relative size and complexity. Banks should maintain data on the critical factors underpinning an external rating tool's obligor or loss severity ratings (as the banks would for any rating assignment process).

Timeliness of Ratings

S 2–16 Risk ratings must be updated whenever new material information is received, but in no instance less than annually.

44. A bank should have a policy that ensures that obligor and loss severity ratings reflect current information. That policy should also specify minimum financial reporting and collateral valuation requirements. When loss severity ratings or estimates depend on collateral values or other factors that change periodically, that policy should take into account the need to update these factors.

45. Banks' policies may include an alternative timetable for updating ratings of exposures below a de minimis amount that the bank determines has no material impact on risk-based capital levels. For example, some banks use triggering events to prompt them to update their ratings on de minimis exposures rather than adhering to a specific timetable.

Multiple Ratings Systems

46. A bank's complexity and sophistication, as well as the size and range of products offered, will affect the types and number of rating systems employed. However, each risk rating system should conform to the standards in this guidance, must be validated for accuracy and consistency, and should be used consistently. Validation exercises should produce evidence that the ratings have been applied consistently.

Chapter 3: Retail Segmentation Systems

Rule Requirements

Part III, Section 22(b)(1): A bank must have an internal risk rating and segmentation system that accurately and reliably differentiates among degrees of credit risk for the bank's wholesale and retail exposures.

Part III, Section 22(b)(3): For retail exposures, a bank must have a system that groups exposures into segments with homogeneous risk characteristics and assigns accurate and reliable PD, ELGD, and LGD estimates for each segment on a consistent basis. The bank's system must group retail exposures into the appropriate retail exposure subcategory and must group the retail exposures in each retail exposure subcategory into separate segments. The bank's system must identify all defaulted retail exposures and group them in segments by subcategories separate from non-defaulted retail exposures.

Part III, Section 22(b)(5): The bank's retail exposure segmentation system must provide for the review and update (as appropriate) of assignments of retail exposures to segments whenever the bank receives new material information, but no less frequently than quarterly.

I. Overview

1. This chapter describes the design and operation of an IRB retail segmentation system. An IRB retail segmentation system groups retail exposures into segments with homogeneous risk characteristics within each of the three retail exposure subcategories (residential mortgage exposures, qualifying revolving exposures (QRE), other retail exposures). Examples of segmentation techniques include the use of obligor (such as income and past credit performance) and exposure (such as product type and loan-to-value) characteristics; or grouping loans by similar estimated default rates and estimated loss severities. The segmentation system used for IRB will often differ from segmentation used for other purposes, such as for marketing and scorecards. The retail risk parameter estimates that determine risk-based capital requirements are assigned at the segment level.

2. The retail IRB framework provides banks substantial flexibility to use the retail segmentation that is most appropriate for their activities, subject to the following broad principles:

- Differentiation of risk—Segmentation should provide meaningful differentiation of risk. Accordingly, in developing the segmentation system, banks should select risk drivers that separate risk distinctly and consistently over time.
- Reliable risk characteristics—Segmentation uses borrower risk characteristics and loan-related risk characteristics that reliably differentiate a segment's risk from that of other segments and that perform consistently over time.

• Consistency—The risk drivers used to segment exposures must be consistent with the predominant risk characteristics the bank uses to measure and manage credit risk.

• Accuracy—The segmentation process should generate segments that separate exposures by realized performance. It should be designed so that actual long-run outcomes closely approximate the retail risk parameters estimated by the bank.

3. Defaulted retail exposures must be segmented separately from non-defaulted exposures. In addition, retail segments should not cross national jurisdictions unless the bank can demonstrate that the exposures in the different jurisdictions have homogeneous risk characteristics.

II. Definition of Default

S 3–1 Banks must use the IRB definition of default when identifying defaulted retail exposures.

4. For retail exposures, banks must use the following definition of default for its IRB system: A retail exposure of a bank is in default if:

• The exposure is 180 days past due, in the case of a residential mortgage exposure or revolving exposure;

• The exposure is 120 days past due, in the case of all other retail exposures; or

• The bank has taken a full or partial charge-off or write-down of principal on the exposure for credit related reasons.

5. The exposure remains in default until the bank has reasonable assurance of repayment and performance for all contractual principal and interest payments on the exposure.

6. For retail exposures, the definition of default is applied to a particular exposure rather than to the obligor. That is, default by an obligor on one obligation would not require a bank to consider all other obligations of the same obligor in default.

III. Retail Segmentation Architecture

A. Criteria for Retail Segmentation

S 3–2 Banks must first place exposures into one of the three retail exposure subcategories (residential mortgage, QRE, and other retail). Banks must then separate exposures into segments with homogeneous risk characteristics.

S 3–3 A retail segmentation system must produce segments that accurately and reliably differentiate risk and produce accurate and reliable estimates of the risk parameters.

7. While banks have considerable flexibility in determining retail segments, they should consider factors affecting the risk characteristics of both borrowers and loans when determining segmentation criteria. Statistical modeling, expert judgment, or some combination of the two may determine the most relevant risk drivers.

8. Examples of acceptable approaches to segmentation include:

• Segmenting exposures by common risk drivers that are relevant and material in determining the loss characteristics of a particular retail product. For example, a bank may segment mortgage loans by LTV band, age from origination, geography, and/or origination channel.

• Segmenting exposures by common risk drivers that are relevant and material in determining the loss characteristics of a particular borrower population. For example, a bank may segment by credit bureau score bands, behavior score bands, and/or delinquency status. In the case of mortgage products, more borrower information may be available and a bank could include the debt-to-income ratio, current income, and/or years at present location.

• Segmenting by grouping exposures with similar estimated loss characteristics, such as expected average loss rates, expected default rates, or expected loss severity rates. Some banks have developed models that rank order default risk or generate an estimated default rate, loss severity, and/or exposure at default for individual exposures. A bank could use such estimates as criteria in their segmentation system.

9. Each retail segment will have an estimated PD, ELGD, LGD, and EAD. In some cases, it may be reasonable to use the same risk parameter estimates for multiple segments. This may occur more frequently for bank estimates of ELGD and LGD as banks may have less robust historical data for estimating these IRB risk parameters. In such cases, the bank should demonstrate that there are no material differences in ELGD or LGD among those segments. Over time, supervisors expect banks to develop more precise data and methodologies for determining ELGD and LGD.

10. Data for certain retail loans are sometimes missing or incomplete, such as data for purchased loans or loans originated with policy exceptions. The overall segmentation system should adequately capture the risk associated with these loans based on the data available. In some cases, missing or incomplete data itself may be a significant risk factor used for segmentation purposes.

11. A bank should substantiate the degree of granularity in its segmentation system and the distribution of exposures across segments. (Here, ''granularity'' is how finely the portfolio is segmented.)

12. Banks have flexibility in determining the granularity of their segmentation system. Each bank should perform internal analysis to determine how granular segments must be to group homogeneous exposures. For example, a bank using credit score ranges to segment its portfolio should provide the rationale for the ranges chosen.

13. A concentration of exposures in a segment (or segments) does not, by itself, reflect a deficiency in the segmentation system. For example, a bank may lend within a narrow risk range and, therefore, have a smaller number of segments than a bank that lends across a wider spectrum of risk. However, a bank with a high concentration of exposures in a particular segment will be expected to show that the bank's segmentation criteria are carefully delineated and well-documented. The bank should be able to demonstrate that there is little risk differentiation among the exposures within the segment, and that the segmentation method produces reliable estimates for each of the risk parameters. A bank should not artificially group exposures into segments specifically to avoid the 10 percent LGD floor for mortgage products. A bank should use consistent risk drivers to determine its retail exposure segmentations and not artificially segment low LGD loans with higher LGD loans to avoid the floor.

S 3–4 Banks should clearly define and document the criteria for assigning an exposure to a particular retail segment.

14. Banks should choose risk drivers that accurately reflect an exposure's risk. Risk drivers selected must be consistent with risk measures used for credit risk management.

15. The method of segmentation will help determine the risk parameters, as well as which techniques should be used for validation and which control mechanisms will best ensure the integrity of the segmentation system. Described below are some techniques for determining whether the segmentation was done appropriately:

• Statistical Models—Banks may incorporate results of statistical underwriting models or scoring models directly into their segmentation process. For example, a bank may use a custom or bureau credit score as a segmenting criterion. In that case, the bank should support the choice of the score, and should demonstrate that it has adequate controls for the credit scoring system.

• Inputs to Models—Banks may incorporate the variables from a statistical model into their segmentation processes. For example, a bank that uses a statistical model to predict losses for its mortgage portfolio could select some or all of the major inputs to that model, such as debt-to-income and LTV, as segmentation criteria. As part of its validation and controls for the segmentation system, the bank should provide an appropriate rationale and empirical evidence for its choice of the particular set of risk drivers from the loss prediction model.

• Expert Judgment—Banks may combine expert judgment with statistical analysis in determining segmentation criteria. However, expert judgment must be well-documented and supported by empirical evidence demonstrating that the chosen risk factors are reliable predictors of risk.

16. A bank should be able to demonstrate a strong relationship between IRB risk drivers and comparable measures used for credit risk management. Specifically, a bank should demonstrate that the segmentation system differentiates credit risk across the portfolio and captures changes in the level and direction of credit risk using measures that are similar to those used in credit risk management. For example, even if a bank uses custom scores for underwriting or account management, generic bureau scores may be used for IRB segmentation purposes if the bank can demonstrate a relationship between these measures.

17. Banks should have clear policies to define the criteria for modifying the segmentation system. Changes in the segmentation system should be documented and supported to ensure consistency and historically comparable measurements.

B. Assignment of Exposures to Retail Segments

S 3–5 Banks should develop and document their policies to ensure that risk-driver information is sufficiently accurate and timely to track changes in underlying credit quality and that the updated information is used to assign exposures to appropriate segments.

18. Under the IRB framework, a bank initially assigns retail exposures to segments based on the risk-driver information available at the time of origination or acquisition. The bank should then continue to monitor the risk characteristics of the exposures and assign exposures to appropriate segments based on refreshed information gathered by the bank as part of its monitoring process.

19. In accordance with industry practices in retail credit risk management, a bank should have a well-documented policy on monitoring and updating information about exposure risk characteristics. The policy should specify the risk characteristics to be updated and the frequency of updates for each product type or sub-portfolio within its retail portfolio. Updating of relevant information on these risk drivers should be consistent with sound risk management.

S 3–6 The bank's retail exposure segmentation system must provide for the review and update (as appropriate) of assignments of retail exposures to segments whenever the bank receives new material information, but no less frequently than quarterly.

20. Decisions regarding the frequency of obtaining refreshed information should reflect the specific risk characteristics of individual segments and/or the potential impact on risk-based capital levels. The frequency of updates will generally vary for different risk drivers and for different products. The underlying principle is that, in every estimation period, retail exposures are assigned to segments that accurately reflect their risk profile and produce accurate risk parameters.

21. Banks should assess their approach to updating information and migrating exposures when validating the segmentation process.

Chapter 4: Quantification

Rule Requirements

Part III, Section 22(c)(1): The bank must have a comprehensive risk parameter quantification process that produces accurate, timely, and reliable estimates of the risk parameters for the bank's wholesale and retail exposures.

Part III, Section 22(c)(2): Data used to estimate the risk parameters must be relevant to the bank's actual wholesale and retail exposures, and of sufficient quality to support the determination of risk-based capital requirements for the exposures.

Part III, Section 22(c)(3): The bank's risk parameter quantification process must produce conservative risk parameter estimates where the bank has limited relevant data, and any adjustments that are part of the quantification process must not result in a pattern of bias toward lower risk parameter estimates.

Part III, Section 22(c)(4): PD estimates for wholesale and retail exposures must be based on at least 5 years of default data. ELGD and LGD estimates for wholesale exposures must be based on at least 7 years of loss severity data, and ELGD and LGD estimates for retail exposures must be based on at least 5áyears of loss severity data. EAD estimates for wholesale exposures must be based on at least 7 years of exposure amount data, and EAD estimates for retail exposures must be based on at least 5 years of exposure amount data.

Part III, Section 22(c)(5): Default, loss severity, and exposure amount data must include periods of economic downturn conditions, or the bank must adjust its estimates of risk parameters to compensate for the lack of data from periods of economic downturn conditions.

Part III, Section 22(c)(6): The bank's PD, ELGD, LGD, and EAD estimates must be based on the definition of default [in the NPR].

Part III, Section 22(c)(7): The bank must review and update (as appropriate) its risk parameters and its risk parameter quantification process at least annually.

Part III, Section 22(c)(8): The bank must at least annually conduct a comprehensive review and analysis of reference data to determine relevance of reference data to bank exposures, quality of reference data to support PD, ELGD, LGD, and EAD estimates, and consistency of reference data to the definition of default contained [in the NPR].

I. Overview

1. Quantification is the process of assigning numerical values to the key risk parameters that are used as inputs to the IRB risk-based capital formulas. This chapter provides guidance on the quantification process for wholesale and retail exposures. For both wholesale and retail portfolios these risk parameters are the probability of default (''PD''), expected loss given default (''ELGD''), loss given default (''LGD''), and exposure at default (''EAD''). Wholesale exposures also require determination of the exposure's maturity (''M''). Risk parameters are assigned to each exposure for wholesale portfolios and to each segment for retail portfolios. Specific quantification issues related to counterparty credit risk transactions, equity exposures, and securitization exposures are described in Chapters 9, 10, and 11, respectively.

2. In any discussions of the IRB system, the risk rating or segmentation system design and the quantification process should be considered together. This chapter focuses on quantification given an existing risk rating or segmentation system design, as covered in Chapters 2 and 3, respectively.

3. Section I establishes an organizing framework for considering

quantification and develops general standards that apply to the entire process. Sections II, III, and IV cover specific supervisory standards that apply to PD, ELGD and LGD, and EAD respectively. The maturity risk parameter receives somewhat different treatment in section V, since it is much less dependent on statistical estimates from historical data. Special cases and applications for quantification are covered in section VI.

A. Stages of the Quantification Process

4. For each risk parameter, quantification may be broken down into four stages: obtaining historical reference data; estimating the relationship between risk characteristics and the risk parameters in the reference data; mapping the correspondence between risk characteristics in the reference data and those in the existing portfolio; and applying the relationship between risk characteristics and risk parameters to the existing portfolio. An evaluation of a bank's quantification process focuses on the overall adequacy of the bank's approach, including an understanding of how the bank breaks down the quantification process where applicable into the four stages.

5. Banks are not required to separate the quantification process into four stages. The four stages are a conceptual framework, and may serve as a useful analytical and implementation guide. Readers may find it helpful to refer to the appendices to this chapter, which illustrate how this four-stage framework can be applied to quantification approaches in practice. The four stages of quantification are described below.

Data—First, the bank constructs a reference data set, or source of data, from which risk parameters can be estimated.

A ''reference data set'' consists of a set of exposures and their associated identifying information and risk characteristics. Reference data sets may include internal data, external data, or pooled data from different internal and external sources. Internal data refers to any data on exposures held in a bank's existing or historical portfolios, including data elements or information provided by third parties (e.g., data from a credit bureau about one's own customers would be considered internal data). External data refers to information on exposures held outside the bank's portfolio, including aggregate industry trends or economic data.

The reference data is described using a set of observed characteristics; consequently, the data set contains variables that can be used for this characterization. For example, risk characteristics for wholesale exposures include obligor and exposure characteristics related to the risk parameters, such as agency debt ratings, risk ratings, financial measures, geographic regions, and the economic environment and industry/sector trends during the time period of the reference data. Risk characteristics for retail exposures include borrower and loan characteristics, such as loan terms, loan-to-value, credit score, income, debt-to-income, or payment history. A bank may use more than one reference data set to improve the robustness or accuracy of the risk parameter estimates.

Estimation—Second, the bank applies statistical techniques to the reference data to determine the relationship between risk characteristics and the estimated risk parameter.

The result of this step is a model that ties descriptive risk characteristics, or drivers, to the risk parameter estimates. In this context, the term ''model'' is used in the most general sense; a model may be a simple calculation of historical averages or a more sophisticated approach based on advanced statistical techniques (e.g., regression). This step may include adjustments for differences between the IRB definition of default and the default definition in the reference data set, as well as adjustments for data limitations.

More than one estimation technique may be used to generate estimates of the risk parameters, especially if there are multiple sets of reference data or multiple sample periods. If multiple estimates are generated, the bank should have a clear and consistent policy for reconciling and combining them into a single estimate at the application stage.

Mapping—Third, the bank creates a link between its portfolio data and the reference data based on corresponding characteristics.

Variables or characteristics used in the estimation model are mapped, or linked, to the variables that are available for the existing portfolio. In order to map effectively, a bank should have reference data characteristics that allow the construction of rating and segmentation criteria that are consistent with those used on the bank's portfolio.

An important element of mapping is making adjustments for differences between reference data sets and the bank's exposures. The bank should map each reference data set and each combination of risk characteristics used in any estimation model.

Application—Fourth, the bank applies the relationship estimated for the reference data to the actual portfolio data.

The ultimate aim of quantification is to attribute a PD, ELGD, LGD, and EAD to each exposure within the wholesale portfolio and to each segment of exposures in the retail portfolio. If multiple data sets or estimation methods are used, the bank should adopt a means of combining the various estimates at this stage.

For wholesale portfolios, this step may include adjustments to default rates or loss rates to ''smooth'' the final risk parameter estimates. If the estimates are applied to individual transactions, the bank must in some way aggregate the estimates at the rating level.

For retail portfolios, the bank may simply apply the risk parameter estimates derived for each segment to the corresponding segment in the existing portfolio. However the application stage could be more complex if multiple data sets or estimation methods were used or if the mapping stage required adjustments.

6. The four-stage quantification process described above outlines a framework that a bank may use for assigning numerical values to the IRB key risk parameters. Whether the quantification process explicitly delineates each aspect of the four stages of quantification for PD, ELGD, LGD, and EAD, or the quantification process is more integrated, each aspect of the quantification process for the key risk parameters should be justified, documented, and subject to monitoring and follow-up.

7. A number of examples are given in this chapter to aid exposition and interpretation of specific quantification issues. None of the examples is sufficiently detailed to incorporate all of the considerations discussed in this chapter. Moreover, technical progress in the area of quantification is rapid. Thus, banks should not interpret a specific example that is consistent with the standard being discussed, and that resembles the bank's current practice, as being a ''safe harbor.'' Banks should consider this guidance in its entirety when determining whether systems and practices are adequate.

B. General Standards for Sound Quantification

8. Several core principles apply to the overall quantification process of risk rating and segmentation systems. Those principles and the general standards that reflect them are discussed in this introductory section. Other supervisory

standards specific to particular stages or risk parameters are discussed in later sections.

9. The risk parameters should be estimated in a manner consistent with sound credit risk management practices and the IRB standards. In addition, a bank should have processes to ensure that these estimates are independently and thoroughly validated and the results reported to senior management.

10. Supervisory evaluation of the quantification process requires consideration of all the standards in this chapter, both general and specific. Particular practical approaches to quantification may be highly consistent with some standards, and less so with others. In assessing a bank's approach, supervisors will weigh the approach's strengths and weaknesses using all the supervisory standards in this chapter as a guide.

S 4–1 Banks should have a fully specified process covering all aspects of quantification (reference data, estimation, mapping, and application). The quantification process should be fully documented.

11. A fully specified quantification process should describe how all four stages (data, estimation, mapping, and application) are addressed for each parameter. The linkages between the bank's quantification and validation processes should also be explicit.

12. An important aspect of the quantification process is the appropriate capture and analysis of developmental evidence in support of techniques applied by the bank. A few examples of such developmental evidence are:

- For reference data—a discussion of how the best available data are chosen from various sources so that the data include periods of economic downturn conditions and the portfolio in the reference data is comparable to the existing portfolio;
- For estimation—discussions of why the bank uses various averaging methods on historical data, how it specifies downturn estimates, or how it develops predictive models;
- For mapping—discussions of how risk characteristics in the reference data compare with those in the existing portfolio; and
- For application—a discussion of the combination of multiple estimates, aggregations of estimates across exposures, or any judgmental adjustments.

13. Major decisions in the design and implementation of the quantification process should be justified and fully documented. Documentation promotes consistency and allows third parties to review and replicate the entire process.

S 4–2 Risk parameter estimates must be based on the IRB definition of default. At least annually, a bank must conduct a comprehensive review and analysis of reference data to determine the relevance of reference data to the bank's exposures, quality of reference data to support risk parameter estimates, and consistency of reference data to the IRB definition of default.

14. Many different sources of data might be appropriately used in an estimation model or the quantification process. Regardless of the data used to derive the risk parameter estimates, such estimates must reflect the IRB definition of default.

15. As part of its annual review of its reference data, a bank must assess the consistency of the reference data with the IRB definition of default. In the early stages of IRB implementation, a bank's internal historical reference data might not include an element that fully conforms to the IRB definition of default. In addition, a bank may change its policies regarding charge-offs or non-accrual. For any internal or external historical data that are not fully consistent with the IRB definition of default, a bank must still ensure that the derived risk parameter estimates are based on the IRB definition of default. This will likely entail making conservative adjustments to reflect data discrepancies; larger discrepancies require greater conservatism.

16. To support quantification and validation of the risk parameter estimates, one of the elements in a bank's internal data should conform to the IRB definition of default. The collection of internal data is discussed in Chapter 6 (Data Management and Maintenance) of this guidance and validation is discussed in Chapter 7 (Controls and Validation).

S 4–3 Banks must separately quantify wholesale risk parameter estimates before adjusting the estimates for the impact of eligible guarantees and eligible credit derivatives.

17. As discussed in Chapter 5, the benefits of wholesale credit risk mitigation from eligible guarantees and eligible credit derivatives are recognized through adjustments to ratings and risk parameter estimates. However, banks must perform the basic quantification of the risk parameters separately from the process of determining an adjustment to an exposure's risk rating assignment resulting from the credit protection or any adjustments to the risk parameters for recognition of the credit protection. In quantifying the impact of the credit protection, banks may make necessary adjustments to the reference data or mapping process, or may estimate the impact of the credit protection on the bank's existing portfolio. Chapter 5 deals with recognized types of contractual arrangements and instruments that transfer all or part of an exposure's credit risk from the bank to one or more third parties.

S 4–4 Banks may take into account the risk-reducing effects of guarantees in support of retail exposures when quantifying the PD, ELGD, and LGD of the segment.

18. A bank may take into account the risk reducing effects of guarantees in support of retail exposures in a segment when quantifying the PD, ELGD, and LGD of the segment, but only for guarantees of individual retail exposures, or guarantees covering all or a pro rata portion of all contractual payments due on a group of retail exposures. (See Example 5 in Appendix B of this chapter.) Insurance in support of retail exposures, for example private mortgage insurance (''PMI''), generally would be considered a guarantee.

19. The risk parameters for exposures covered by retail guarantees should be based on historical experience of exposures with similar coverage and the expected benefits of the guarantees on future performance. Segments benefiting from retail guarantees are still subject to applicable regulatory floors, such as the 10 percent LGD floor for residential mortgages.

20. Retail guarantees may affect PD or ELGD and LGD. In most cases, and in particular for PMI, banks reflect the effects of retail guarantees primarily through the quantification of ELGD and LGD. For retail exposures, banks may directly reflect the expected benefit of retail guarantees in the risk parameters, in contrast to the two-step process that is required for guarantees of wholesale exposures.

21. Banks should monitor and assess potential counterparty risk for guarantees of retail exposures through tracking and analyzing the financial strength of each guarantor. When reflecting guarantees of retail exposures in PD or ELGD and LGD estimates banks should take into account the credit quality of the guarantor. Other things equal, PD or ELGD and LGD estimates should be increased if the credit quality of the guarantor deteriorates. In addition, banks should consider the potential for additional counterparty risk during economic downturn conditions.

22. Banks may also choose to incorporate retail guarantee coverage into their segmentation systems. For example, mortgage loans without PMI could be placed into different segments than those with PMI.

23. Since there are a variety of programs for retail guarantees that provide differing types and levels of coverage, banks incorporating retail guarantees into the IRB risk parameters should ensure that their systems are sufficient to estimate the expected benefits based on the actual amount of coverage within the existing portfolio, regardless of whether or not they segment by coverage. This may require exposure-by-exposure tracking over the life of the exposure to accurately reflect the expected benefits for different forms of retail guarantees. Banks also should develop appropriate reference data sets that can be used to estimate the effect on PDs or ELGDs and LGDs for exposures that are covered by retail guarantees.

S 4–5 Banks may only reflect the risk-reducing benefits of tranched guarantees of multiple retail exposures by meeting the definition and operational criteria for synthetic securitizations.

24. Guarantees of multiple retail exposures that do not cover all or a pro rata portion of all contractual payments due on the underlying exposures are considered to be tranched. (See Example 5 in Appendix B of this chapter.)

25. A bank may obtain a reduction in risk-based capital requirements in the case of such tranched guarantees of multiple retail exposures, but only through applying the rules for securitization exposures provided in the NPR. To obtain any benefits, tranched guarantees of multiple retail exposures must satisfy all aspects of the definition of synthetic securitization and comply with all requirements for securitization treatment in the NPR. (Also see Chapter 11 (Securitizations) for additional guidance.)

26. In some cases, the determination of the risk-based capital benefit for a qualifying tranched guarantee will be relatively straightforward. For example, the securitization framework provides three general approaches for determining risk-weighted assets: The ratings-based approach, the internal assessment approach, and the supervisory formula approach (''SFA''). A bank can use the RBA if its exposure is externally rated or has an inferred rating. The SFA may be employed when external or inferred ratings are not available for tranching structures. (See Chapter 11 for a more detailed discussion of the applicability of the various approaches in different circumstances.)

S 4–6 At a minimum, the quantification process and the resulting risk parameters must be reviewed annually and updated as appropriate.

27. All material aspects of the quantification process should be reviewed annually, with adjustments and enhancements made as needed. A bank should have a well-defined policy for reviewing and updating the quantification design. New analytical techniques and evolving industry practice should be taken into account in considering changes to quantification techniques. The review should evaluate the judgmental adjustments embedded in the estimates; new data or evolving industry practice may suggest a need to modify those adjustments. Particular attention should be given to any changes that may have resulted in a significant change in the composition of exposures, such as new business lines, material mergers or acquisitions, and material divestitures, loan sales or securitizations. Such changes, which raise questions about the appropriateness of risk ratings, the segmentation system, and the quantification process, should trigger a review and revisions as needed.

28. The review process is particularly relevant for the reference data stage because new data become available frequently. A bank must ensure continued applicability of the reference data to its existing exposures, and the reference data should reflect the types of exposures found in the bank's existing portfolio. Reference data must be of sufficient quality to support PD, ELGD, LGD, and EAD estimates. A well-defined and documented process should be in place to ensure that the reference data are updated as frequently as needed, as fresh data become available or as portfolio changes make necessary. All data sources, characteristics, and the overall processes governing data collection should be fully documented, and that documentation should be readily available for review.

29. At a minimum, risk parameter estimates must be reviewed at least annually, and the process for doing so should be documented in the bank's policy. If the review reveals that risk parameter estimates should be updated, the updates should be performed promptly and documented clearly. New data should be incorporated into the risk parameter estimates using a well-defined process to correctly merge data sets over time, and the frequency of risk parameter updates and the process for doing so should be justified and documented in bank policy.

30. The risk parameter estimates may be particularly sensitive to changes in the way banks manage exposures. When such changes take place, the bank should consider them in all steps of the quantification process. Changes likely to significantly increase a risk parameter value should prompt increases in the risk parameter estimates. When changes seem likely to reduce the risk parameter value, estimates should be reduced only after the bank accumulates a significant amount of actual experience under the new policy to support the reductions.

31. The mappings of the existing portfolio to the reference data used in estimation should also be reviewed with sufficient frequency to ensure that the mappings continue to be appropriate. Mappings should be reaffirmed at least annually for both internal and external reference data, regardless of whether the risk rating or segmentation systems have undergone explicit changes during the period covered by the reference data set, because the relationship between a bank's existing exposures and the reference data may change over time. For example, in wholesale portfolios the relationships between internal rating grades and external agency ratings may change during the economic cycle because of differences in expected rating migration. When significant characteristics have been changed, added, or dropped, the characteristics of the existing exposures should be newly mapped to the characteristics of the reference data.

S 4–7 Quantification should be based upon the best available data for the accurate estimation of the risk parameters.

32. Banks should always use the best available data when quantifying the risk parameters. In order to derive accurate risk parameter estimates, banks should incorporate relevant data, whether such data are internal or external. One objective of the IRB framework is to encourage further development of credit risk quantification techniques. Improving the quality, capture, and retention of internal data is an essential prerequisite for such advances.

33. Internal data refers to any data on exposures existing or historically held in a bank's own portfolio, including historical exposure and risk characteristics as well as exposure performance—even if some data components are purchased from outside sources. For example, property appraisals purchased from a third-party appraiser for updating the LTVs of a bank's mortgage exposures are considered internal data. However, if a bank purchases data on risk characteristics or performance for exposures outside of its own portfolio, these data would be considered external.

34. A bank should incorporate relevant external data for quantifying risk parameters if internal data are

insufficient to produce accurate and appropriate estimates. For example, the use of external data may be necessary when internal data do not provide adequate coverage of economic downturns or when there are significant data gaps, either for periods of time or for the types of exposures in the bank's existing portfolio. Banks should demonstrate that all data used to quantify risk parameters are relevant.

35. A bank should have a process for vetting potential reference data, whether the data are internal or external. The vetting should assess whether the data are sufficiently accurate, sufficiently complete, sufficiently representative, and sufficiently informative of the bank's existing exposures.

36. Furthermore, a bank should have adequate data to estimate risk parameters for all exposures on the books, even if some are likely to be sold or securitized before their long-term credit performance can be observed.

S 4–8 The sample period for the reference data must meet the minimum length for each risk parameter by portfolio.

S 4–9 The reference data must include periods of economic downturn conditions, or the parameter estimates must be adjusted to compensate for the lack of data from such periods.

37. For PD estimation, a minimum of five years of data are required for all portfolios. For ELGD, LGD and EAD estimation, a minimum of seven years of data are required for wholesale portfolios, and five years of data are required for retail portfolios.

38. This requirement for a minimum of five or seven years of data should not be taken to imply that reference data sets of this length are optimal. The range of conditions covered by the sample period may be as important as its length. Specifically, lack of inclusion of periods of economic downturn conditions could bias PD, ELGD, LGD, or EAD estimates downward and lead to unjustifiably lower risk-based capital requirements.

39. If a bank's reference data do not include periods of economic downturn conditions, the bank must adjust its risk parameter estimates to compensate for the lack of these data. Given the particular importance of periods of economic downturn, a bank may choose to augment an existing reference data set with additional data from such a period without including all of the intervening years, if the overall data set satisfies required minimums, otherwise covers the appropriate range of economic conditions and is appropriate for the bank's existing portfolio. Alternatively, a bank may draw more heavily on subsamples of its internal portfolio (for example, particular MSAs or geographic regions) that experienced economic downturn periods, or use appropriate external data. However, the bank should justify the exclusion of available internal data for portions of its portfolio and any inclusion of alternative internal or external data sources, as well as its weighting assumptions.

40. The minimum data requirement may be met using internal data, external data, or pooled data combining internal data with similar data from other sources. However, as noted above, the minimum sample period for reference data should not be construed as generally providing optimum results. A longer sample period usually fosters more robust estimation; for example, a longer sample will include more default observations for ELGD, LGD or EAD estimation. Banks should consider the use of additional data when more than the minimum length of historical data is available. However, the potential increase in precision afforded by a larger sample should be weighed against the potential for diminished comparability of older data to the existing portfolio; striking the correct balance is a matter of judgment. Reference data must not differ systematically from the existing portfolio in ways that seem likely to be related to default risk, loss severity, or exposure at default.

S 4–10 Banks should clearly document how they adjust for the absence of significant data elements in either the reference data set or the existing portfolio.

41. Some exposures in the reference data set and the existing portfolio will have missing data elements, some of which are important factors for measuring risk. Banks may use a variety of statistical methods to impute values for the missing factors—provided these factors are sufficiently correlated to known information about the exposure. Expertise is required to judge whether such correlations can be established. Regardless of the approach and level of sophistication, the bank should have a clear and well-documented process describing how it treats missing data elements in the estimation and mapping stages.

42. For example, in the development of a default model, missing data elements can be imputed and the estimates of the missing data elements input to the model. However, if particular data elements are missing on significant portions of the population, this may justify the estimation of separate models where data elements are missing.

S 4–11 Judgmental adjustments to risk parameter estimates, either upward or downward, may be an appropriate part of the quantification process, but must not result in an overall bias toward lower risk parameter estimates.

43. Judgment will inevitably play a role in the quantification process and may materially affect the estimates. Judgmental adjustments to estimates are often necessary because of some limitations on available reference data or because of inherent differences between the reference data and the bank's existing exposures. The bank must ensure that adjustments are not biased toward optimistically low risk parameter estimates. This standard does not prohibit individual adjustments that result in lower estimates of risk, because both upward and downward adjustments are expected. Individual adjustments are less important than broad patterns; consistent signs of judgmental decisions that lower parameter estimates materially may be evidence of bias. The bank should also ensure that large judgmental adjustments are well justified and infrequent, as frequent large adjustments could indicate a problem with the rating methodology.

44. The reasoning and empirical support for any adjustments, as well as the mechanics of the process, should be documented. The bank should conduct sensitivity analysis to demonstrate that the adjustment procedure is not biased toward reducing risk-based capital requirements. The analysis should consider the impact of any judgmental adjustments on estimates and risk-based capital requirements, and should be fully documented.

S 4–12 Risk parameter estimates should incorporate a degree of conservatism that is appropriate for the overall rigor of the quantification process.

45. Estimated values of the risk parameters should be as precise and accurate as possible. However, estimates are inherently subject to uncertainty and potential error. Aspects of the quantification process that are apt to induce uncertainty and error include model error, differences in default definitions, errors in judgment, and data deficiencies. A general principle of the IRB framework is that the assumptions and adjustments embedded in the quantification process should reflect the degree of uncertainty or potential error inherent in the process.

46. In practice, a reasonable estimation approach likely will result in a range of defensible risk parameter values. The choices of the particular

assumptions and adjustments that determine the final estimate, within the defensible range, should reflect the uncertainty in the quantification process. That is, the more uncertainty in the process, the more risk-based capital should be required.

47. The degree of conservatism should be related to factors such as the relevance and depth of the reference data, the quality of the mapping, the precision of the statistical estimates, and the amount of judgment used throughout the process. Conservative methodologies should also be considered for new products, such as new residential mortgage products. Margins of conservatism need not be added at each step, as that could produce an excessively conservative result. Instead, the overall margin of conservatism should adequately account for all uncertainties and weaknesses. Improvements in the quantification process (use of better data, estimation techniques, and so on) may allow risk parameter estimates to become less conservative over time.

S 4–13 Mapping should be based on a comparison of available data elements that are common to the existing portfolio and each reference data set.

48. Sound mapping practice uses elements that are available in both the existing portfolio and the reference data. If a bank chooses to ignore certain variables or to weight some variables more heavily than others, those choices should be supported. At least two kinds of mapping challenges may arise:

• First, even if similarly named variables are available in the historical reference data and the existing portfolio data, they may not be directly comparable. Hence, a bank should ensure that linked variables are truly similar. Although adjustments to enhance comparability can be appropriate, they should be rigorously developed and documented.

• Second, levels of aggregation may vary. The bank's information systems for its existing exposures might supply more detail. For example, to apply the estimates derived from the reference data, the portfolio data could be regrouped to match the coarser aggregation of the reference data.

49. Mapping should be consistent with the risk rating and segmentation systems. Levels and ranges of key characteristics for each rating or segment of the bank's existing exposures should approximate the values of similar characteristics for the reference data.

50. The standard allows for use of a limited set of common variables that are predictive of default, loss or exposure risk, in part to permit flexibility in early years when data may be far from ideal for some portfolios. Nevertheless, mapping exercises should aim to provide the greatest possible assurance that it is appropriate to apply the bank's estimation framework to the existing portfolio of exposures. In instances where banks rely on a limited set of common variables, or where those variables are not clearly identical, banks should compensate by being more conservative in other stages of the quantification process.

S 4–14 A mapping process should be established for each reference data set and for each estimation model.

51. Banks should never assume that the rationale for a mapping is self-evident. Even when reference data are drawn from internal default and loss experience, a bank should still link the characteristics of the reference data with those of the existing portfolio. The use of internal data for reference data purposes does not eliminate the need for a mapping requirement because changes in bank strategy or external economic forces may alter the risk characteristics or composition of the portfolio over time, even within the same wholesale obligor/loss severity ratings or within the same retail segments.

• For example, a wholesale rating system that has been explicitly designed to replicate external agency ratings may or may not be effective in producing a replica; formal mapping would be performed. Indeed, in such a system the kind of analysis involved in mapping may help identify inconsistencies in the rating process itself.

• Similarly for retail portfolios, even if the bank uses the same segmentation system over time, it should verify that the risk factors behind the segmentation capture the same types of borrowers in today's portfolio as they did in the reference data. For example, a given product offering may attract types of customers that differ over time in ways that affect risk but are not fully reflected in the risk factors used for segmentation.

52. Banks often use multiple reference data sets, and then combine the resulting estimates to get a risk parameter estimate for a wholesale obligor/loss severity rating or for a retail segment. A bank that does so should conduct a rigorous mapping process for each data set.

S 4–15 Banks that combine estimates from internal and external data or that use multiple estimation methods should have a clear policy governing the combination process and should examine the sensitivity of the results to alternative combinations.

53. To ensure that the best available data are used to produce accurate risk estimates a bank might combine data from multiple sources and may use multiple estimation methods. Banks often combine internal data with external data and use data from different sample periods. For example, for a wholesale portfolio a bank may combine results from corporate-bond default databases with results from equity-based models of obligor default.

54. The manner in which the estimates from multiple data sets or estimation methods are combined is extremely important, since different combinations will produce different risk parameter estimates. A bank should investigate risk parameter estimates' sensitivity to different ways of combining data sets or combining estimation methods. When results are highly sensitive to how data or estimates are combined, a bank should make every effort to understand the nature (reasons and implications) of the instability (including use of statistical tests) and choose among the alternatives conservatively. A bank should document why it selected the combination techniques it did, and these techniques should be subject to appropriate approval and oversight by management.

S 4–16 The aggregation of risk parameter estimates from individual exposures within rating grades or segments should be governed by a clear and well-documented policy.

55. Because different methods of aggregation are possible, a bank should have a clear and well-supported policy regarding how aggregation should be accomplished. Banks are required to have a quantification system in which the rating grades or segments are homogeneous with regard to risk; in this case, each obligor or exposure within homogeneous grades or segments would receive equal emphasis in quantification.

56. For wholesale exposures, rating grade-based mapping naturally produces an average risk parameter estimate by rating grade. Conversely, obligor-based or loss severity-based mappings require the aggregation of the individual risk parameter estimates to the rating grade level. The bank should document this aggregation and compare the results of alternative mappings. These mappings are discussed in the relevant PD and ELGD and LGD sections.

57. If a bank uses a prediction model for a retail portfolio that assigns a risk parameter estimate to each exposure, it

should specify and document the process by which it aggregates the exposure-level risk parameters to assign segment-level estimates.

II. Probability of Default (PD)

A. Data

58. For PD quantification, a minimum of five years of data that include periods of economic downturn conditions is required; in the event that such data are not available, a bank must adjust its PD estimates to compensate for the lack of data from periods of economic downturn conditions. The data for PD quantification should include relevant characteristics of both defaulted and non-defaulted exposures such as information on the exposures at different points in time, payment history and ultimate disposition.

59. To estimate PD accurately and support the determination of risk-based capital requirements, a bank must have a comprehensive reference data set with observations that should be representative of the bank's existing exposures. For wholesale portfolios the reference data should map to obligors, and for retail portfolios the reference data should map to segments of the existing portfolio. Clearly, the data set used for estimation should be similar to the portfolio to which such estimates will be applied. The same comparability standard applies to both internal and external data sets.

60. To ensure ongoing applicability of the reference data, a bank should assess the characteristics of its existing exposures relative to the characteristics of exposures in the reference data. Such variables might include qualitative and quantitative information on the exposure, internal and external wholesale ratings and rating dates, updated retail credit scores, corporate lending relationships, retail product type and loan terms, or geography. A bank should maintain documentation that fully describes all explanatory variables in the data set, including any changes to those variables over time. A well-defined and documented process should be in place to ensure that the reference data are updated as frequently as is practical, as fresh data become available or portfolio changes make necessary.

Example

A bank determines that the aggregate national retail mortgage portfolio has not experienced downturn conditions during the time horizon for which internal reference data are available. However, regional sub-portfolios did experience default rates that were significantly higher than average during the available data history. Data are available from regional recessions in New England (late 1980s and 1990 –1995), Texas (1983–1989), and California (1991–1995). The bank demonstrates that the drivers of significantly higher default rates in these regional recessions can be extrapolated to the national portfolio, and the bank justifies and documents the resulting adjustments that would be necessary in the mapping and application stages.

B. Estimation

61. Estimation of PD is the process by which risk characteristics of the reference data are related to default rates for each wholesale obligor or for each retail segment in the reference portfolio. The relevant risk characteristics that are predictive of the likelihood of default are referred to as ''drivers of default.'' Drivers for wholesale obligors might include financial ratios, management expertise and industry. Drivers for retail segments might include product, loan and borrower characteristics such as loan-to-value, credit line utilization, credit score, or delinquency status. Also, a portfolio separator such as geographic region, while not a direct driver of default, might indicate separate relationships of the PD to these drivers by geographic region.

S 4–17 PD estimates must be empirically based and must represent a long-run average.

62. The PD is an estimate of the long-run average of one-year default rates for wholesale rating grades, for segments of non-defaulted retail exposures where seasoning is not material, or for a segment of non-defaulted retail exposures in a retail exposure subcategory for which seasoning effects are not material.

63. PD estimates should represent averages of one-year default rates over a mix of economic conditions (including economic downturn conditions) sufficient to provide a reasonable estimate of the one-year default rate over the economic cycle for the rating grade or retail segment as specified above. If a bank uses the best available historical data to estimate PD as the mean of yearly realized default rates over at least five years, and the bank can empirically support that this period includes economic downturn conditions, then this is likely to adequately represent long-run experience. The emphasis should not solely be on time span; the long-run average concept captures the breadth, as well as the length, of experience.

64. Estimation generally should treat data from different time periods similarly. A bank choosing instead to place greater relative weight on data from particular time periods should empirically demonstrate that doing so produces a more accurate estimate of future default behavior for each wholesale rating grade and retail segment in its existing portfolio. For example, more recent data might be given more weight in the estimation process if the bank demonstrates that doing so is more predictive of future default behavior.

65. For a statistical model to satisfactorily produce long-run PD estimates, the reference data used in the default model must meet the long-run requirement. A model can be used to relate risk drivers to the outcome—default or non-default. Drivers might include wholesale financial ratios, retail borrower credit scores, loan terms, economic conditions or industry variables. Such a model must be calibrated to capture the default experience over a reasonable mix of economic conditions. For example, a Merton-style model's estimate of distance to default must be calibrated to the default rate using long-run experience. Whether a PD model is developed internally or by a vendor, a bank should verify that the model's results have been calibrated to a long-run average PD.

66. Adjustments that are part of the PD estimation process must not result in an overall bias toward lower risk parameter estimates. The bank should rigorously validate, justify, and document such adjustments.

Example 1

If the bank's internal data history does not include any periods of economic downturn, the bank may use external data sources that include an economic downturn period to adjust PD estimates upward. The bank should justify the assumption that the relationship between the long-run average PD and the risk drivers observed in the external data applies to its portfolio. This practice is consistent with this guidance.

Example 2

A bank uses internal default experience to estimate PDs for its wholesale portfolio. However, the bank has historically failed to recognize defaults under the IRB default definition. For example, exposures sold at a material credit loss were not captured as defaults. The realized PD using the IRB definition would be higher than that observed by the bank

(and LGD rates might differ as well). If the bank made no adjustment for the missing defaults, its practice would not be acceptable.

S 4–18 Effects of seasoning, when material, must be considered in the PD estimates for retail portfolios.

67. A bank should determine whether age since origination is a significant risk factor for its retail exposures on the balance sheet. If so, then seasoning may be a material risk factor.

68. Material seasoning effects are generally indicated when default rates of a segment of retail exposures follow a characteristic age profile, rising for the first several periods following origination. Seasoning of this type is often significant for longer-maturity consumer products such as residential mortgages, but may also be important for shorter-lived portfolios.

69. Additional common indicators of material seasoning effects are large or rapidly growing portfolio concentrations of unseasoned exposures where age is a significant risk factor. Such concentrations could result from a high growth rate of originations, unusually high prepayment or attrition rates, or high rates of sales or securitization of seasoned exposures.

70. Even when age is a significant risk factor and default rates follow a characteristic age profile, seasoning effects may not be material if a retail exposure subcategory's age distribution is stable and the age distribution of the portfolio is not concentrated in unseasoned exposures.

71. The operational definition of material seasoning effects for a segment of retail exposures is that the annualized cumulative default rate for that segment materially exceeds the long-run average of one year default rates.

72. If seasoning effects are material for the retail exposure subcategory, banks must use a PD that reflects a longer-run horizon and provides adequate risk-based capital to cover potential credit losses for its unseasoned segments in that subcategory. Specifically, rather than the best estimate of the long-run average of 1-year default rates, the higher PD that must be used is defined as the estimated annualized cumulative default rate of the segment over the expected remaining life of the exposures in the segment.[3]

73. Estimates of expected remaining life should reflect a long-run average for exposures in the segment; banks should avoid undue volatility in their estimates caused by short-term fluctuations in market factors (such as interest rates). Also, banks may incorporate discounting of cash flows into their estimates of expected remaining life if they so choose.

74. Even if the exposures are potentially subject to material seasoning effects, a bank may use the definition of PD specified in Paragraph 62 of this chapter for certain exposures that are originated for sale or securitization, provided that:

- The bank credibly demonstrates its ability and intent to sell or securitize the exposures within a 90-day time frame. It can do so by:

—An established historical track record of sales or securitizations for similar exposures; or

—Commitments in the form of forward sales agreements or other contractual pipeline arrangements that provide reasonable assurances that the exposures will be sold within 90 days.

- The exposures are specifically identified at origination.
- The bank monitors sales or securitization market indicators, including an assessment of counterparty risk, to ensure its continuing ability to sell or securitize these exposures in a variety of market conditions.

Exposures that are not sold or securitized within 90 days should be assigned to segments that fully reflect their risk profile based on their updated risk characteristics.

75. Banks should note that under the rules for securitization exposures in the NPR, a bank may need to quantify the IRB risk parameters for some securitized exposures. For that quantification process, a bank must meet the quantification requirements for estimating PDs for retail exposures held on balance sheet, including the requirements for estimating PD when seasoning effects are material.

76. The account age profile may be tracked by using account age as a criterion in the segmentation system for the retail exposures or as a predictive variable in a PD quantification model. Several methods can be used to account for seasoning in the PD estimates. See example 4 in Appendix B of this chapter.

C. Mapping

77. Mapping is establishing a linkage between the bank's existing exposures and the reference obligor data used in the default model. Hence, mapping involves identifying how drivers of default for the existing exposures correspond to the reference data's drivers. Wholesale drivers include financial and nonfinancial variables, and assigned rating grades; retail segment drivers include exposure and borrower risk characteristics.

78. Key drivers of default should be factored directly into the obligor rating or segmentation process. But in some circumstances, certain effects related to industry, geography, or other factors are not reflected in wholesale obligor risk rating assignments, retail segmentation, or default estimation models. In such cases, it may be appropriate for banks to capture the impact of the omissions by using different mappings for different business lines or types of exposures. Supervisors expect this practice to be transitional, and that banks eventually will incorporate the omitted effects into the wholesale obligor risk rating, the retail segmentation system or the PD estimation process as they are uncovered and documented, rather than adjusting the mapping.

79. Banks may use multiple reference data sets or estimation methods, and then combine the resulting estimates to get an obligor rating grade or segment PD. A bank that does so should conduct a rigorous mapping process for each data set and estimation method. For example, when using data from a number of wholesale rating agencies, the mapping should take into consideration differences in the agencies' rating methods by mapping each agency's obligor rating scale separately. Similarly, when combining the results from internal historical data and a default prediction model over a retail portfolio, the bank should map both the historical long-run PD and the model's output to the existing portfolio.

Retail Mapping

80. For retail portfolios, mapping involves linking segments in the reference data to segments in the existing portfolio. If the bank's segmentation process has been in place for a long time, the mapping between internal historical data and the existing portfolio data may be straightforward. However, if the bank's retail segmentation system has varied over time, the bank should demonstrate a mapping between its existing segmentation system and the segments in the reference data. In either case, the bank should demonstrate that the mapping is appropriate and conduct periodic assessments to verify this.

Example

2ven if similarly named characteristics are available in the reference data and the existing portfolio data, they may not be directly comparable. For example, in a retail portfolio of auto loans, the particular

[3] Expected remaining life is the average period from today until an exposure of a particular type will prepay, pay in full through normal amortization, or default.

types of auto loans (for example, new or used, direct or indirect) may vary from one application to another. Hence, a bank should ensure that linked drivers are truly similar in PD estimation. Although adjustments to enhance comparability can be appropriate, they should be rigorously developed and documented.

Wholesale Mapping

81. There are two broad approaches to the mapping process for wholesale portfolios, obligor mapping and rating grade mapping.

82. In obligor mapping, each existing obligor is mapped to the reference data based on its individual characteristics. For example, if a bank applies a default model to estimate an obligor-level default probability, that model uses certain obligor-level variables as inputs. The values of these variables for each obligor are used as inputs to the obligor-level default probability estimation model.

Example

In estimating rating grade PDs, a bank relies on observed default rates on bonds in various agency ratings. To map its internal rating grades to the agency ratings, the bank identifies variables that together explain much of the rating variation in the bond sample. The bank then conducts a statistical analysis of those same variables within its portfolio of obligors, using a multivariate distance calculation to assign each portfolio obligor to the external rating whose characteristics it matches most closely (for example, assigning obligors to ratings so that the sum of squared differences between the external rating averages and the obligor's characteristics is minimized). This practice is broadly consistent with sound mapping practices.

83. In rating grade mapping, characteristics of the obligors within an internal rating grade are averaged or otherwise summarized to construct a ''typical'' or representative obligor for each rating grade. Then, the bank maps that representative obligor to the reference data. For example, if the bank uses a model that takes certain variables as inputs to produce an obligor-level default probability estimate, a representative value for each input variable would be determined for each internal rating grade, creating in effect a ''typical obligor'' for a rating grade; the default probability associated with that typical obligor will serve as the rating grade PD in the application stage. As an alternative example, a bank maps the typical obligor from each internal rating grade to a particular external NRSRO rating based on quantitative and qualitative characteristics and assigns the realized long-run average one-year default rate for that external rating to the internal rating grade in the application stage.

Example

A bank uses rating grade mapping to link portfolio obligors to the reference data set described by agency ratings. The bank reviews publicly-rated portfolio obligors within an internal rating grade to determine the most common agency rating, does the same for all rating grades, and creates a linkage between internal and agency ratings. The strength of the linkage is a function of the number of externally rated obligors within each rating grade, the distribution of those agency ratings within each rating grade and the similarity of externally rated obligors in the grade to those not externally rated. This practice is broadly consistent with sound mapping practices, and, for the reasons discussed below, may require adjustments and the addition of margins of conservatism.

84. An acceptable quantification process could include the use of either a rating grade mapping or obligor mapping approach. However, in the absence of other compelling considerations, banks should use obligor mapping because rating grade mapping has the following drawbacks:

- First, default probabilities are nonlinear using many estimation approaches. As a result, the typical obligor's default probability using the rating grade mapping approach is often lower than the mean of the individual obligor default probabilities using the obligor mapping approach.
- Second, a hypothetical obligor with a rating grade's average characteristics may not represent well the risks presented by the rating grade's typical obligor, since different types of obligors might end up in the same grade.

85. A bank electing to use rating grade mapping instead of obligor mapping should be especially careful in choosing a ''typical'' obligor for each grade. Doing so generally requires that the bank examine the actual distribution of obligors within each rating grade, as well as the characteristics of those obligors. Banks should be aware that different statistical measures (such as mean, median, or mode) will produce different results, and may result in materially different PDs for a particular rating grade. The bank should justify its choice and should have a clear and consistent policy toward the calculation.

86. In addition to the general requirement to compare elements that the reference data and portfolio have in common, both obligor and rating grade mappings should also take into account differences in rating philosophy (as commonly revealed through analysis of rating migration) between any ratings embedded in the reference data set and the bank's own rating regime.

D. Application

87. The application stage produces final PD estimates that will be used in the determination of risk-based capital requirements. This stage is expected to be relatively mechanical for most retail portfolios, except when the bank uses multiple reference data sets or multiple estimation methods or significantly changes its segmentation system over time. Judgmental adjustments to the risk parameter estimates should be rare for retail portfolios.

88. This stage may be somewhat more involved for wholesale portfolios. After the bank applies the PD estimation method to its existing exposures using the mapping process, adjustments to the raw results derived from the estimation stage may be appropriate to obtain final rating grade PD estimates. For example, the bank might aggregate individual obligor default probabilities to the rating grade level or otherwise produce a rating grade PD estimate, or might smooth results because a rating grade's PD estimate was higher than a lower quality grade. The bank should explain and support all such adjustments when documenting its quantification process.

89. The bank must ensure that the PD applied in the determination of risk-based capital requirements for each wholesale exposure or retail segment is not less than the regulatory floor of 0.03 percent, except for exposures to or directly and unconditionally guaranteed by a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Commission, the European Central Bank, or a multi-lateral development bank, to which the bank assigns a rating grade associated with a PD of less than 0.03 percent.

Example

A bank uses external data to estimate long-run average PDs for each wholesale rating grade. The resulting PD estimate for Grade 2 is slightly higher than the estimate for Grade 3, even though Grade 2 is supposedly of higher credit quality. The bank uses statistics to demonstrate that this anomaly occurred because defaults are rare in the highest quality rating grades. The bank judgmentally adjusts the PD estimates for Grades 2

and 3 to preserve the expected relationship between obligor rating grade and PD, but demonstrates that total risk-weighted assets across both rating grades using the adjusted PD estimates are no less than total risk-weighted assets based on the unadjusted estimates, using a typical distribution of obligors across the two rating grades. An adjustment such as given in this example is consistent with this guidance.

III. Expected Loss Given Default (ELGD) and Loss Given Default (LGD)

90. The ELGD and LGD quantification process is similar to the PD quantification process. Once a bank identifies and obtains a reference data set of defaulted exposures and relevant descriptive characteristics, it selects a technique to estimate the credit-related economic loss per dollar of EAD for a defaulted wholesale exposure with a given array of characteristics or for all defaulted exposures in a reference retail segment. The reference data should then be mapped to the bank's existing exposures so that the bank can estimate ELGD and LGD for each wholesale exposure, loss severity rating, or retail segment, as the case may be. Finally, application adjustments may be made to obtain final risk parameter estimates.

91. The ELGD is an estimate of the default-weighted average economic loss (where individual defaults receive equal weight), per dollar of EAD, the bank expects to incur in the event that the obligor were to default within a one-year horizon over a mix of economic conditions, including economic downturn conditions. LGD estimates reflect the estimate of the economic loss per dollar of EAD that the bank expects to incur if the obligor were to default within a one-year horizon during economic downturn conditions. Accordingly, ELGD estimates incorporate a mix of economic conditions (including economic downturn conditions) while LGD estimates reflect losses that would occur during economic downturn conditions (*i.e.*, conditions in which aggregate default rates are significantly higher than average). LGD estimates cannot be less than ELGD estimates for a particular wholesale exposure or retail segment.

A. Data

92. Unlike reference data sets used for PD estimation, data sets for ELGD and LGD estimation contain only exposures to defaulted obligors. At least two broad categories of data are necessary to produce ELGD and LGD estimates.

93. First, factors must be available to group the defaulted exposures in meaningful ways. Wholesale exposures are grouped by characteristics that are likely to be important in predicting loss rates—for example, whether an exposure is secured and the type and coverage of collateral, the seniority of a claim, economic conditions, and the obligor's industry. The retail segmentation system may separate exposures by borrower and exposure risk characteristics predictive of loss severity or by an ELGD or LGD score—for example, credit score, business line, credit line utilization for unsecured credit lines, or loan-to-value for mortgage loans.

94. Although the characteristics identified above have been found to be significant in academic and industry studies, a bank's quantification of ELGD and LGD certainly need not be limited to these variables. For example, a bank might examine many other potential drivers of loss severity, including geographic location, exposure type, tenor of the relationship, wholesale obligor size, or retail borrower wealth.

95. Second, data must be available to calculate the realized economic loss of each defaulted exposure. Such data may include the market value of the wholesale exposure at default or the market value for a pool of charged-off retail exposures, which can be used to proxy a recovery rate. Alternatively, economic loss may be calculated for wholesale exposures and retail segments using the EAD (including principal and accrued but unpaid interest or fees), losses on the sale of repossessed collateral, direct workout costs, an appropriate allocation of indirect workout costs, the timing and amount of subsequent recoveries, and the discount rate appropriate to the risk of the exposure.

96. Data should be comprehensive. All cash flow data should include dollar amounts and dates. For example, roll to charge-off or non-accrual, number of days past due, or bankruptcy status should be captured if these factors are expected to be significant for ELGD and LGD. Recovery data should include direct payments from the obligor/borrower, the sale of the collateral or realized income from the sale of defaulted exposures. Supportable net realizable value of defaulted exposures and collateral acquired in default that has yet to be disposed of can be included as part of the reference data. Cost data comprise the material direct and indirect costs associated with workouts and collections.

97. Ideally, loss severity should be measured once all recoveries and costs have been realized. However, a bank may not resolve a defaulted wholesale obligation for many years following default. For practical purposes, banks relying on actual recovery data may choose to close the period of observation before this final resolution occurs—that is, at a point in time when most costs have been incurred and when recoveries are substantially complete. Banks that do so should estimate the additional costs and recoveries that would likely occur beyond this period and include them in ELGD and LGD estimates. A bank should document its choice of the period of observation, and how it estimated additional costs and recoveries beyond this period.

98. Reference data sets may contain individual loss observations that are less than 0 percent or greater than 100 percent. However, extra diligence is required for loss realizations reported to be less than 0 percent to ensure that economic loss is being measured.[4]

Example 1

A bank with internal wholesale data covering the period 1997 through 2003 relies primarily on these data for quantifying its wholesale risk parameter estimates. The bank will continue to extend this internal data set as time progresses. Its current policy mandates that credits be resolved within two years of default, so the data set contains the most recent data available. Although the existing data set satisfies the seven-year requirement for ELGD quantification, the bank is aware that it does not include appropriate economic downturn conditions for certain portfolios. In comparing its loss estimates with rates published in external studies that cover longer time periods and include economic downturn periods for similarly stratified data, the bank observes that its estimates are systematically lower. To be consistent with the NPR, the bank must reflect economic downturn conditions in its ELGD estimates, as such estimates represent the loss the bank expects to incur in the event that the obligor of the exposure defaults within a one-year horizon over a mix of economic conditions, including economic downturn conditions.

Example 2

A bank develops evidence that during the 2001 to 2003 period of highly

[4] Banks are not required to truncate the loss severity data used to derive ELGD and LGD parameter estimates. Nonetheless, *final* ELGD and LGD estimates should not be negative or zero. Readers are directed to the discussion of the application stage for ELGD and LGD in a later section of this guidance for elaboration of related supervisory expectations regarding ELGD and LGD quantification.

elevated mortgage prepayments owing to record-low interest rates, losses were likely deferred in mortgage portfolios because of readily available refinancing options. The bank also concludes that losses on foreclosures during this period were limited because housing prices generally increased throughout the United States despite a recession. However, the bank notes that a similar (though not as substantial) drop in interest rates occurred in the early 1990s, during a recession that was characterized by a sharp drop in property values in many parts of the country. Because the recent period may have been atypical, the bank chooses to weigh older data (perhaps from external sources) more heavily than recent data for ELGD quantification. Such an approach to weighting the data would be consistent with this guidance.

99. The following examples illustrate how definitions of default in the reference data that are different from the IRB definition complicate ELGD estimation.

Example 1

For ELGD estimation, a bank includes in its default database only exposures that actually experience a loss and excludes exposures for which no loss was recorded (effectively applying a ''loss given loss'' concept). This practice is not consistent with the NPR because the bank's default definition is narrower than the IRB definition.

Example 2

A bank relies on two external data sources to estimate ELGD because it lacks sufficient internal data. Both sources use definitions that deviate from the IRB definition; one uses ''bankruptcy filing'' to indicate default while another uses ''missed principal or interest payment.'' Although the different definitions result in significantly different loss estimates for the loss severity ratings defined by the bank, the bank simply combines the external data sources in deriving its ELGD estimates. The bank's practice is not consistent with the guidance. The bank should determine the impact on the parameter estimates of the different definitions used in the reference data sets. For minor definitional differences, the bank may be able to make appropriate adjustments during the estimation stage. If the differences are difficult to quantify, an appropriate level of conservatism should be applied or the bank should seek other sources of reference data.

B. Estimation

100. Estimation of ELGD and LGD is the process by which characteristics of the reference data are related to loss severity. Relevant characteristics for wholesale exposures might include variables such as seniority, collateral, exposure type, or business line. For retail portfolios, as discussed in Chapter 3, a common ELGD or LGD might be applied so long as the estimate is accurate for each segment and exposures within those segments have homogenous risk characteristics.

101. In estimating ELGD and LGD, banks should identify drivers of loss. One estimation approach is to separate the reference defaults into groups that do not overlap, for example, by business line, predominant collateral type, or loan-to-value coverage. The ELGD estimate for each category could then be based on the default-weighted average economic loss per dollar of EAD, and LGD could be similarly derived using data from periods of economic downturn conditions. In most cases, it will not be acceptable to calculate ELGD as the average of annual loss rates (where loss severity for each year receives equal weight). Years with a relatively large number of defaults generally provide richer data for measuring loss severity compared to years when there are relatively few defaults. Thus, in general, years with a relatively large number of defaults contribute more information and should be appropriately weighted when estimating ELGD. In addition, if years of relatively low default rates typically have relatively low loss severity rates, then using the average of annual loss rates will tend to understate ELGD.

102. A statistical model, for example a regression model using data on loss severity and some quantitative measures of the loss drivers, could be applied to estimate ELGD or LGD. Any model must meet the requirements for validation discussed in Chapter 7. Other methods for estimating ELGD or LGD could also be appropriate.

Example 1

To estimate ELGD, a bank uses only internal data. Although information on security and seniority is lacking, no adjustments for the lack of data are made in the estimation or application steps. This practice is not consistent with the guidance because there is ample external evidence that security and seniority are relevant in estimating ELGD. A bank with such limited internal default data must incorporate external or pooled data.

Example 2

A bank groups observed defaults in the reference data according to geographic region and collateral. One of the pools has too few observations to produce a reliable estimate. By augmenting the loss data with data from similar geographic regions with the same collateralization, the bank derives an ELGD estimate. Provided the bank can adequately support the process used to establish the relevance of the data from other regions, this approach would be consistent with the guidance.

103. Banks should evaluate adjustments in the ELGD and LGD estimation process to ensure that they do not result in an overall bias toward lower estimates of risk.

Example 1

A bank is unable to properly discount a segment's cash flows because the reference data do not include the dates of recoveries (and related costs). However, the bank has sufficient internal data to calculate economic loss for defaulted exposures in another portfolio segment. The bank can support the assumption that the timing of cash flows for the two segments is comparable. Using the available data and informed judgment, the bank adjusts the estimates for the data-poor segment to reflect how much the measured loss without discounting should be grossed up to account for the time value of money and the distressed nature of the assets. This practice is consistent with the guidance.

Example 2

Collateral is one factor used by a bank to estimate ELGD. Although the available internal and external data indicate a higher ELGD, the bank judgmentally assigns a loss estimate of 2 percent for exposures secured by cash collateral. The bank contends that the lower estimate is justified because it expects to do a better job of following policies for monitoring cash collateral in the future. Such an adjustment is generally not appropriate because it is based on projections of future performance rather than realized experience. This practice generally is not consistent with the guidance.

S 4–19 ELGD and LGD estimates must be empirically based and must reflect the concept of ''economic loss.''

104. ELGD and LGD are based on the concept of economic loss, which is a broader, more inclusive concept than accounting measures of loss. Broadly speaking, economic loss incorporates the mark-to-market loss of value of a defaulted exposure and collateral,

including material accrued but unpaid interest or fees, and all material direct and indirect costs of workout and collections, net of recoveries. Losses, recoveries, and costs should all be discounted to the time of default. See the fourth paragraph of the LGD definition in section 2 of the NPR for the definition of economic loss.

105. Banks often estimate loss using data on costs and recoveries from workouts of defaulted exposures; however, appropriate estimates may sometimes be developed using market data on defaulted exposures.

106. The scope of cash flows included in recoveries and costs is meant to be broad. Material recovery costs that can be clearly attributed to certain exposures, plus material indirect cost items, must be reflected in the bank's ELGD and LGD assignments for those exposures. Recovery costs include the costs of running the bank's collection and workout departments and the cost of outsourced collection services directly attributable to recoveries during a particular time or for a particular segment or portfolio, at as granular a level as possible. Recovery costs also include an appropriate percentage of other ongoing costs, such as overhead.

107. Recovery costs can be allocated using the same principles and techniques of cost accounting that are usually used to determine the profit and loss of activities within any large enterprise. Collection and workout departments, however, may cover services not 100 percent attributable to defaulted exposures. For example, the same call center may manage reminder calls to delinquent retail accounts, many of which will never default, as well as collection calls. The expenses for these functions should be differentiated to allocate only collection expenses attributable to defaulted exposures.

108. When costs cannot be allocated because of data limitations, the bank may assign those costs using broad averages. For example, the bank could allocate costs by outstanding dollar amounts of loans, including accrued but unpaid interest or fees at the time of default, within each rating grade or segment.

109. All costs, and recoveries should be discounted to the time of default using the time interval between the date of default and the date of the realized loss, incurred cost, or recovery; this calculation should be on a pooled basis for retail exposures. The discount rate should reflect the costs of holding defaulted assets over the workout period, including an appropriate risk premium.[5] As such, an appropriate discount rate will reflect the uncertainty of recovery cash flows and the presence of undiversifiable risk.

S 4–20 ELGD estimates must reflect the expected default-weighted average economic loss rate over a mix of economic conditions, including economic downturn conditions.

110. For wholesale exposures, ELGD is the best estimate of the economic loss per dollar of EAD that would be incurred in the event that the obligor (or a typical obligor in the applicable loss severity rating) defaults within a one-year horizon. For retail segments, ELGD is the best estimate of the economic loss per dollar of EAD that would be incurred on the segment from exposures that default within a one-year horizon.

111. ELGD estimates should reflect expected long-run loss severities and should represent an estimate of the default-weighted average economic loss as observed over a complete credit cycle. Similar to PD quantification, loss severity data must include periods of economic downturn conditions or the bank must adjust its estimates to compensate for the lack of data from economic downturn conditions.

Economic Downturn LGD

S 4–21 LGD estimates must reflect expected loss severities for exposures that default during economic downturn conditions, and must be greater than or equal to ELGD estimates.

112. In addition to ELGD, banks must quantify LGD in a way that appropriately reflects downturn conditions for each wholesale exposure and for each retail segment. LGD is an estimate of the percentage of EAD that would be lost in the event of a default during the one-year horizon, if that default were to occur during a period of economic downturn. Under economic downturn conditions default rates are higher than under more neutral conditions, and LGD estimates must reflect expected loss rates resulting from downturn conditions.

113. If a bank obtains supervisory approval to use its own estimates of LGD for an exposure subcategory, it must use internal estimates of LGD for all exposures within that subcategory. Within retail, the three subcategories are residential mortgage, QRE, and other retail, while within wholesale credit the two subcategories are high-volatility commercial real estate (''HVCRE'') and all other wholesale.

[5] This implies that the appropriate discount rate for IRB purposes likely will differ from the interest rate required under FAS 114 for accounting purposes.

114. If a bank has not received prior written approval from its primary Federal supervisor to use internal LGD estimates, the bank must use the supervisory mapping function. The supervisory mapping function calculates LGD by taking 92 percent of the ELGD and adding eight percentage points to that result.

115. The LGD estimate for an exposure or segment may never be less than the ELGD assigned to that exposure or segment, and must be higher than ELGD if a higher estimate is appropriate based on robust analysis of the impact of economic downturn conditions on loss severity. The LGD for some exposures or segments may be substantially higher than ELGD, while for others it may not.

S 4–22 A bank may use internal estimates of LGD only if supervisors have previously determined that the bank has a rigorous and well-documented process for assessing the effects of economic downturn conditions on loss severities and for producing LGD estimates consistent with downturn conditions. The process must appropriately identify downturn conditions, identify the impact of economic downturn conditions on loss rates, identify any material adverse correlations between drivers of default and LGD, and incorporate any identified correlations and/or downturn impact into the quantification of LGD.

116. In determining whether to approve a bank's use of internal estimates of LGD for a subcategory of exposure, supervisors will consider whether the process for generating LGD estimates is consistent with the supervisory standard above and produces internal estimates of LGD that are reliable and sufficiently reflective of economic downturn conditions.

117. To meet the requirements for internal estimates, a bank should satisfy the following conditions:

- The bank should establish policies to govern the process for identifying downturn conditions and generating LGD estimates. The policy should address:

—Criteria for identifying downturn conditions;

—The level of product and geographic scope to be used for identification of economic downturn conditions;

—Data requirements;

—Methods to determine the impact of downturn conditions on loss severities; and

—Quantification methodologies to produce LGD estimates.

- The bank must have a rigorous quantification process (covering all stages of quantification, including

reference data, estimation, mapping, and application) for estimating LGD. The bank must be able to identify economic downturns, determine the impact of downturn conditions on loss severities, and appropriately quantify LGD.

118. In principle, quantification of LGD is no different from quantification of any other IRB risk parameter. The target of the quantification process is different, but the stages of quantification (data, estimation, mapping, and application) apply to LGD just as they do to other risk parameters such as PD and ELGD. However, the details necessarily differ; the remainder of this section discusses supervisory standards related to quantification of own-estimates of LGD to reflect economic downturn conditions.

Identifying Economic Downturn Conditions

119. To identify periods of downturn conditions, the bank should first articulate both product and geographic scope, since default rates for different types of exposures in different areas are themselves likely to differ. At the product level, the highest level of aggregation is a given IRB subcategory of exposure (*i.e.*, residential mortgage, QRE, other retail, HVCRE, and all other wholesale). Thus, for example, downturn conditions for wholesale exposures other than HVCRE are defined as periods of high default rates for non-HVCRE wholesale exposures in general. A bank may choose to use lower levels of aggregation in order to achieve better measurement of actual credit risk and greater risk sensitivity. For example, a bank with an industry concentration in a subcategory of exposures (such as corporate exposures to technology companies) may find that information relating to a downturn in that industry sector may be more relevant for the bank than a general downturn affecting many regions or industries.

120. The geographic scope for identification of economic downturn conditions is the geographic ''footprint'' of the bank within an exposure subcategory, that is, the geographic area from which exposures of each type are drawn (or can be expected to be drawn customarily). This ''footprint'' need not be the same for each subcategory of exposures. Banks are not required to further subdivide with regard to geography; for example, if a bank's HVCRE exposures are drawn from two distinct regions such as the Southeast and the Northeast, they may define a downturn in HVCRE as a period of significantly above-average default rates in HVCRE for the two regions jointly, rather than considering each separately. Nonetheless, as is the case with product scope, banks are permitted to further subdivide geographically if they choose to do so.

121. The exception to the ''footprint'' scope is that separate countries must be treated separately. For example, a bank with residential mortgage exposures in the United States and Japan must separately identify the conditions under which residential mortgage default rates would be significantly higher than average in each national jurisdiction.

122. Given these requirements for product and geographic scope, downturn conditions with respect to a wholesale exposure or retail segment are defined as those conditions under which the aggregate default rate for the exposure's wholesale or retail exposure subcategory (or subdivision of such subcategory selected by the bank) within the related geographic footprint and/or jurisdiction (or finer subdivision selected by the bank) would be significantly higher than average.

123. It may be useful to distinguish this definition of economic downturn from other definitions that might seem reasonable. For example, an economic downturn for purposes of LGD estimation is *not* defined as a period of high loss severity, that is, a period in which realized losses given default are high. Loss severities may be high during an economic downturn—indeed, that is the primary motivation for the separate estimation of economic downturn LGD—but this is not the defining characteristic; high realized loss severity rates do not *define* a downturn. Similarly, economic downturns are *not* defined as periods of depressed collateral values, although collateral values may be low when default rates are high. Finally, economic downturn conditions for purposes of LGD estimation are *not* defined as periods of poor economic performance as determined by other measures such as GDP growth or other traditional measures of business conditions and economic climate. Traditional measures of economic activity may indeed show weakness during periods corresponding to ''economic downturn conditions'' as defined for purposes of LGD estimation, but a period of weak economic activity does not in and of itself indicate the existence of economic downturn conditions as defined in the NPR. Economic downturn conditions are identified only through reference to default rates for exposure subcategories within relevant geographic regions.

Estimation of LGD

124. Once relevant downturn conditions are identified, a bank must determine the impact of such conditions on loss severities and construct appropriate estimates of LGD under economic downturn conditions for each wholesale loss severity rating grade or exposure and each retail segment. LGD should be the empirically based best estimate of the loss severity as a percentage of exposure if the obligor were to default during economic downturn conditions. Note that although estimates are empirically based, the purpose of quantification is not to measure past patterns and dependencies, but to generate predictions of likely future outcomes.

125. Banks may choose to focus the quantification process on LGD directly. However, in many cases it may be more practical to estimate the extent to which loss rates can be expected to exceed ELGD under economic downturn conditions, through estimation of the difference (LGD–ELGD) or estimation of the percentage increase in the loss rate, or perhaps through some other translation of ELGD into LGD. In that case, the result of one estimation process—that for ELGD—is used an input to the LGD estimation process, and any evaluation of the robustness of LGD estimates would have to adequately consider the potential modeling error and estimation error introduced by their reliance on ELGD as a key input.

126. Identification of the impact of economic downturn conditions on LGD, and incorporation of that impact into LGD estimates, requires suitable design of all stages of the quantification process. No single approach is presumed to be correct, and there are many alternative approaches that, if properly carried out, could satisfy the supervisory requirements for use of internal estimates of LGD. Several examples, while not intended to be exhaustive, can serve to illustrate the point.

Example 1

A bank estimates a relationship between loss rates and a set of independent variables or risk drivers that is robust over periods covering a wide range of conditions, including economic downturns. The bank determines that the main impact of an economic downturn on LGD arises through changes in certain risk drivers (such as collateral values) under economic downturn conditions. The bank quantifies LGD through a process similar to a stress test, with the

identified drivers of loss severity stressed to the values they would assume under economic downturn conditions, based on historical observations.

Example 2

A bank conducts rigorous analysis to construct a model linking risk drivers for LGD to variables that characterize economic downturn conditions, including underlying economic variables and the way those variables tend to change in a downturn. The bank uses that model to directly simulate the impact of downturn conditions on LGD rather than using downturn values for the variables that tend to determine loss severity rates under more normal conditions.

Example 3

A bank determines that the impact of economic downturn conditions on LGD arises from a fundamental change in the relationship between risk drivers and LGD during a downturn. That is, the bank finds that loss severities rise in a downturn because certain risk drivers or variables that have an impact on losses, such as collateral type or seniority, have a different quantitative influence on loss severity during a downturn than during other periods. The bank estimates a relationship between loss severity rates and risk driving variables using data from periods of economic downturn conditions.

The approaches briefly described in the examples above also require careful consideration of appropriate mapping, since use of an estimated relationship between LGD and any other variables or risk drivers would require mapping of currently observed values of those variables for exposures, rating grades, or segments to the corresponding values of those drivers during economic downturn conditions.

Example 4

A bank conducts a rigorous comparison of average recovery rates with recovery rates observed during appropriately identified downturn periods, finding that the impact of economic downturn conditions can be characterized as a fixed, across-the-board reduction in recovery rates. The bank is able to provide evidence that this relationship is statistically robust, and superior to other approaches to LGD quantification. The bank uses the implied, empirically based adjustments in the application stage of the LGD quantification process to reflect the impact of economic downturns.

C. Mapping

127. ELGD and LGD mapping follows the same general standards as PD mapping. A mapping should be plausible and should be based on a comparison of loss severity-related data elements common to both the reference data and the existing portfolio. The mapping approach is expected to be unbiased, such that the exercise of judgment does not consistently lower ELGD and LGD estimates. The default definitions in the reference data and the existing portfolio of exposures should be comparable, as should be the methods of recovery. The mapping process should be updated regularly, well-documented, and independently reviewed.

128. Mapping involves matching exposure-specific data elements available in the existing portfolio to the factors in the reference data set used to estimate expected loss severity rates. Examples of factors that influence loss rates include collateral type and coverage, seniority, industry, and location. Reference data often do not include workout costs and will often use different discount rates. Judgmental adjustments for such differences should be well-documented and empirically based to the extent possible.

129. Different data sets and different approaches to ELGD and LGD estimation may be appropriate, especially for different business segments or product lines. Each mapping process must be specified and documented.

D. Application

130. At the application stage, banks apply the ELGD and LGD estimation framework to their existing portfolio of credit exposures. This step might require banks to aggregate retail segment-level ELGD and LGD estimates derived from more granular reference data into estimates applicable to broader segments in the existing portfolio, to aggregate individual wholesale ELGD and LGD estimates into discrete loss severity ratings, or to combine estimates.

131. The inherent variability of recovery, due in part to unanticipated circumstances, demonstrates that no exposure type is risk-free, regardless of structure, collateral type, or collateral coverage. The existence of recovery risk dictates that the application stage should result in an ELGD and LGD above 0 percent. As was discussed in the data section, a data set may include observations with negative realized loss rates. Although these transactions may be included in the ELGD and LGD estimation process, no exposure or rating grade should be assigned an ELGD or LGD estimate that is less than or equal to zero percent for purposes of risk-based capital calculations.

132. The LGD (*i.e.*, the economic downturn loss estimate) for each segment of residential mortgage exposures (other than segments of residential mortgage exposures for which all or substantially all of the principal of each exposure is directly and unconditionally guaranteed by the full faith and credit of a sovereign entity) may not be less than 10 percent.

IV. Exposure at Default (EAD)

133. As EAD quantification is somewhat less advanced than other areas of quantification, it is addressed in somewhat less detail in this guidance. Banks should continue to innovate in the area of EAD estimation, refining and improving practices in EAD measurement.

134. A bank must provide an estimate of EAD for each exposure in its wholesale portfolio and for each segment in its retail portfolio. For fixed exposures like term loans, EAD is equal to the carrying value unless there is an allocated transfer risk reserve for the exposure or the exposure is held available-for-sale. For variable exposures such as loan commitments, revolving exposures and other lines of credit, EAD for each exposure includes the outstanding balance at the point of capital measurement plus an estimate of net additions to the total balance due, including estimated future additional advances of funds, including principal and accrued but unpaid interest and fees that are likely to occur before and after default assuming that the exposure were to default within a one-year horizon. The estimate of net additions must reflect what would be expected during a period of economic downturn conditions.

135. Refer to Chapter 9 of this guidance and the NPR for guidance on quantifying EAD for OTC derivative contracts, repo-style transactions, and eligible margin loans.

136. For retail and wholesale exposures in which only the drawn balance has been securitized (*e.g.*, a typical credit card securitization), the bank must reflect its share of the exposures' undrawn balances in EAD. The undrawn balances of exposures for which the drawn balances have been securitized must be allocated between the seller's and investors' interests on a pro rata basis, based on the proportions of the seller's and investors' shares of the securitized drawn balances.

137. A number of methods can be used to estimate EAD. One common approach is based on loan equivalent exposure (''LEQ''), which is typically expressed as a percentage of the current total committed but undrawn amount.[6] EAD can thus be represented as:

EAD = current outstanding + LEQ × (total committed − current outstanding)

A. Data

138. Like reference data sets used for ELGD and LGD estimation, EAD data sets typically contain only exposures to defaulted obligors, although data on troubled non-defaulted obligors also could be informative in estimation of these parameters. The same reference data are often used for ELGD, LGD and EAD quantification. In addition to relevant descriptive characteristics (referred to as ''drivers'') that can be used in estimation, the reference data must include historical information on the exposure (both drawn and undrawn amounts) as of some date prior to default, as well as the drawn exposure at the date of default.

139. As discussed below under ''Estimation,'' EAD estimates may be developed using either a cohort method or a fixed-horizon method. The bank's reference data set should be structured so that it is consistent with the estimation method the bank applies. Thus, the data should include information on the total commitment, the undrawn amount, and the exposure drivers for each defaulted exposure, either at fixed calendar dates for the cohort method or at a fixed interval prior to the default date for the fixed-horizon method.

140. The reference data should contain variables that enable the bank to group the exposures to defaulted obligors in meaningful ways. Banks should consider how a wide range of obligor and exposure characteristics affect EAD. Examples include time from origination, time to expiration or renewal, economic conditions, risk rating changes, or certain types of covenants. Some potential drivers may be linked to a bank's credit risk management skills, while others may be external to the bank.

B. Estimation

141. To derive EAD estimates for lines of credit and loan commitments, characteristics of the reference data are related to additional drawings on an exposure up to and after the time a default event is triggered. Estimates of any additional extensions of credit expected by a bank subsequent to realization of a default event should be factored into the quantification of EAD. The estimation process should be capable of producing a plausible average estimate of draws on unused available credit (*e.g.*, LEQ) to support the EAD calculation for each exposure or retail segment.

Example

A bank determines that a business unit forms a homogeneous pool for the purposes of estimating EAD. That is, although the exposures in this pool may differ in some respects, the bank determines that the credit lines share a similar drawdown experience in default. The bank should provide reasonable support for this pooling through analysis of lending practices and available internal and external data.

142. Two broad types of estimation methods are used in practice, the cohort method and the fixed-horizon method.

143. Under the cohort method, a bank groups defaults into discrete calendar periods, such as a year. A bank may use a longer period if it provides a more accurate estimate of future gross losses arising from undrawn exposures. For retail exposures, the bank estimates the relationship between the balances for defaulted exposures at the start of the calendar period and at the time at default. For wholesale exposures, the bank estimates the relationship between the drivers as of the start of that calendar period and LEQ for each exposure to a defaulter. For each exposure category or retail segment (that is, for each combination of exposure drivers identified by the bank), an LEQ estimate could be based on the mean additional drawing for exposures in that category or segment as a proportion of the undrawn lines. One approach to combine results for multiple periods into a single long-run average would be weighting the period-by-period means by the proportion of defaults occurring in each period, so that each default receives equal weight.

144. Under the fixed-horizon method, for each defaulted exposure the bank compares additional drawdowns to the gross committed but undrawn amount that existed at a fixed date prior to the date of the default (the horizon). For example, the bank might base its estimates on a reference data set that supplies the actual amount outstanding and any additional extensions along with the drawn and undrawn amounts (as well as relevant drivers) at a date a fixed number of months prior to the date of each default, regardless of the actual calendar date on which the default occurred. Estimates of LEQ for wholesale exposures are computed from the average drawdown proportions that occur over the fixed-horizon interval, for whatever combinations of the driving variables the bank has determined are relevant for explaining and predicting EAD. LEQs estimated for retail segments are computed from the increase in balances that occur over the fixed-horizon interval for the defaults in the segment relative to their credit limits. The time interval used for the fixed-horizon method should be sufficiently long to capture the additional drawdowns generated by exposures that default during the year for which the risk parameters are being estimated. In particular, the appropriate fixed interval will be influenced by charge-off policies. For example, using a six-month time interval for credit card loans would underestimate EAD.

Special Considerations for Retail EAD Estimation

145. Different methods are used to estimate EAD for open credit lines. The LEQ method outlined in this guidance is one technique observed in practice. Other methods directly estimate the defaulted balances for a segment over a one-year window without taking the committed line limit into account. These other methods may be acceptable if the bank could show that the size of the line is not relevant given the other risk factors used in the analysis.

146. EAD for a segment should accurately estimate the total exposure at default for the segment. Poor segmentation may result in inaccurate EADs. For example, if loans within a segment do not have homogenous risk characteristics because larger exposures are more likely to default than smaller exposures, then estimated EADs may be biased downward.

S 4–23 Estimates of additional drawdowns must reflect net additional draws expected during economic downturn periods.

147. Conceptually, banks should approach EAD quantification in a fashion parallel to LGD quantification with respect to the potential for volatility over the economic cycle. Specifically, estimates of net additional drawdowns should reflect what would be expected during economic downturn periods. Certain exposure types may not exhibit cyclical EAD variability; in these cases, use of a long-run default-weighted average draw proportion used to derive EAD in the IRB risk-based capital calculation is appropriate. But for exposure types for which drawdowns are expected to be larger when default rates are significantly higher than average EAD—estimates

[6] This is frequently referred to as the credit conversion factor (CCF).

should take into account this cyclical variability. In such cases, the estimated draw proportion used to derive the EAD input to the risk-based capital calculation should exceed the long-run default-weighted average, and should be the bank's estimate of the net additional drawdown proportion per default expected during economic downturn conditions. For this purpose, banks may use averages of EADs observed during economic downturn periods, forecasts based on appropriately conservative assumptions, or other similar methods.

C. Mapping

148. If the characteristics that drive EAD in the reference data are the same as those used for the risk rating or segmentation system of the bank's existing portfolio, mapping may be relatively straightforward. However, if the relevant characteristics are not available in a bank's existing portfolio, the bank will encounter the same mapping complexities that it does when mapping PD, ELGD, and LGD in similar circumstances.

D. Application

149. In the application stage, the estimated relationship between risk drivers and EAD is applied to the bank's existing portfolio. Multiple reference data sets may be used for EAD estimation and combined at the application stage, subject to the general standards for using multiple data sets.

S 4–24 Estimates of additional drawdowns prior to default for individual wholesale exposures or retail segments must not be negative.

150. Analogous to the prior discussion of ELGD and LGD quantification, reference data sets used for estimation of additional drawdowns may contain individual negative drawdown observations and observations that exceed 100 percent of the undrawn line amount. Regardless, final estimates of additional drawdowns prior to default for individual wholesale exposures or retail segments must not be negative.

V. Maturity (M)

151. A bank must assign an effective maturity (''M'') to each wholesale exposure in its portfolio; this measure is also referred to as ''average life.'' In general, M is the weighted-average remaining maturity, measured in years, of the cash flows that the bank expects under the contractual terms of the exposure, using the undiscounted amounts of the cash flows as weights. Alternatively, a bank may apply the nominal remaining maturity, measured in years, of the exposure. M is a direct calculation; as such it is not subject to the four stages of the quantification process.

152. The data required to calculate M are the undiscounted amount and timing of each remaining contractual cash flow, measured in years from the date of the calculation. Specifically, M is calculated as the sum of all time-weighted cash flows, where the weights are equal to the fraction of the total undiscounted cash flow to be received at each date.

Example

A bank holds an asset with two remaining contractual cash flows. 33 percent of the total remaining contractual cash flow is expected at the end of one year and the other 67 percent is expected two years from today. For risk-based capital purposes, M for this asset could be calculated as: $M = (1 \times 0.33) + (2 \times 0.67) = 1.67$; or simply $M = 2$, applying the nominal remaining contractual maturity.

153. The relevant cash flows are the future payments the bank expects to receive from the obligor, regardless of form; they may include payments of principal, interest, fees, or other types of payments depending on the structure of the transaction.

154. For exposures with pre-determined cash flow schedules (fixed-rate loans, for example), the calculation of the weighted-average remaining maturity is straightforward, using the scheduled timing and amounts of the individual undiscounted cash flows. Cash flows associated with other types of credit exposures may be less certain. In such cases, the bank should establish a method of projecting expected cash flows. In general, the method used for any exposure should be the same as the one used by the bank for purposes of valuation or risk management. The method should be well-documented and subject to independent review and approval. A bank should demonstrate either that the method used is standard industry practice, or that it is widely used within the bank for purposes other than risk-based capital calculations. A bank may use its best estimate of future interest rates to compute expected contractual interest payments on a floating-rate exposure, but it may not consider expected but non-contractually required returns of principal when estimating M.[7]

155. To be conservative, a bank may set M equal to the maximum number of years the obligor could take to fully discharge the contractual obligation (provided that the maximum is not longer than five years, as noted below). This maximum will often correspond to the stated or nominal maturity of the instrument. Banks should make this conservative choice (maximum nominal maturity) if the timing and amounts of the cash flows on the exposure cannot be projected with a reasonable degree of confidence.

156. For repo-style transactions, eligible margin loans and over-the-counter derivatives contracts subject to qualifying master netting agreements, the bank may compute a single value of M for the transactions as a group by weighting each individual transaction's effective maturity by that transaction's share of the total notional value subject to the netting agreement, and summing the result across all of the transactions.

157. For risk-based capital calculations, the value of M for any exposure is subject to certain upper and lower limits, regardless of the exposure's actual effective maturity. The value of M should never exceed 5 years. If an exposure clearly has a greater effective maturity, the bank may simply use a value of $M = 5$ rather than calculating the actual effective maturity.

158. For most exposures, the value of M should be no less than one year. For certain short-term exposures that are not part of a bank's ongoing financing of a borrower and that have an original maturity of less than one year, M must be greater than or equal to one day or to the nominal or effective remaining maturity.[8]

VI. Special Cases and Applications

A. Loan Sales

S 4–25 Quantification of the risk parameters should appropriately recognize the risk characteristics of exposures that were removed from reference data sets through loan sales or securitizations.

159. Loan sales and securitizations can pose substantial difficulties for quantification. For example, PDs might appear disproportionately low if loans are sold before their inherent long-term

[7] Question 31 in the NPR requests comment on the appropriateness of permitting a bank to consider prepayments when estimating M, and on the feasibility and advisability of using discounted (rather than undiscounted) cash flows as the basis for estimating M.

[8] Section 31(d)(7) of the NPR defines an exposure that is not part of a bank's ongoing financing of the obligor as one where the bank (1) has a legal and practical ability not to renew or roll over the exposure in the event of credit deterioration of the obligor, (2) makes an independent credit decision at the inception of the exposure and at every renewal or rollover, and (3) has no substantial commercial incentive to continue its credit relationship with the obligor in the event of credit deterioration of the obligor.

risk becomes manifest. Upwardly adjusting risk parameter estimates to account for sales or securitization would be particularly important for a bank that sells off primarily exposures that are performing poorly (for example, delinquent loans).

160. When risk parameter estimates use internal historical data as reference data sets and the potential bias created by loan sales and securitizations is material, the bank should identify, by detailed risk characteristics, the loans sold out of the pool or portfolio. Any potential bias caused by removing these loans should be corrected.

161. For banks with a history of regularly selling or securitizing loans of particular types, long-run performance data may be available from the servicers or trustees. Alternatively, banks may be able to estimate the performance of the loans sold or securitized by constructing comparable reference data sets with similar risk drivers using internal historical data from retained pools or external data.

B. Multiple Legal Entities

162. Some banks have various portfolios that are centrally managed, even though the exposures are held by multiple legal entities. Certain activities, including ratings activities, segmentation and quantification, can be conducted across multiple legal entities. However, each bank member of the consolidated group must separately ensure that risk parameters assigned to its credit exposures are appropriate on a standalone basis. For example, if a particular bank within the banking group holds exposures with characteristics not representative of the broader consolidated organization (such as credit card loans originated through a specific marketing channel or mortgage loans in a certain location), the bank must ensure the quantification process produces PDs, ELGDs, LGDs, and EADs that reflect the risk associated with the exposures within that legal entity.

163. Each bank (including each depository institution) within a banking group that has centrally managed quantification processes should perform periodic evaluations to confirm that its risk-based capital requirements accurately reflect its risk profile.

Appendix A: Illustrations of the Quantification Process for Wholesale Portfolios

This appendix provides examples to show how the logical framework described in this guidance, with its four stages (data, estimation, mapping, and application), applies when analyzing quantification practices. The framework is broadly applicable—for PD, ELGD, LGD or EAD; using internal, external, or pooled reference data; for simple or complex estimation methods—although the issues and concerns that arise at each stage depend on a bank's approach. These examples are intended only to illustrate the logic of the four-stage IRB quantification framework, and should not be taken to endorse the particular techniques presented in the examples.

Example 1: PD Quantification From Bond Data

- A bank establishes a correspondence between its internal rating grades and external rating agency grades; the bank has determined that its Grade 4 is equivalent to ^{3}Ba and ^{1}B on the Moody's scale.
- The bank regularly obtains published estimates of mean default rates for publicly rated Ba and B obligors in North America from 1970 through 2002.
- The Ba and B historical default rates are weighted 75/25, and the result is a preliminary PD for the bank's internal Grade 4 exposures.
- However, the bank then increases the PD by 10 percent to account for the fact that the Moody's definition of default differs from the IRB definition.
- The bank makes a further adjustment to ensure that the resulting rating grade PD is greater than the PD attributed to Grade 3 and less than the PD attributed to Grade 5.
- The result is the final PD estimate for Grade 4.

Process Analysis for Example 1:

Data—The reference data set consists of issuers of publicly rated debt in North America over the period 1970 through 2002. The data description is very basic: Each issuer in the reference data is described only by its rating (such as Aaa, Aa, A, Baa, and so on).

Estimation—The bank could have estimated default rates itself using a database purchased from Moody's, but since these estimates would just be the mean default rates per year for each rating grade, the bank could just as well (and in this example does) use the published historical default rates from Moody's; in essence, the estimation step has been outsourced to Moody's. The 10 percent adjustment of PD is part of the estimation process in this case because the adjustment was made prior to the application of the agency default rates to the internal portfolio data.

Mapping—The bank's mapping is an example of a rating grade mapping; internal Grade 4 is linked to the 75/25 mix of Ba and B. Based on the limited information presented in the example, this step should be explored further. Specifically, the bank should justify the appropriateness of the 75/25 mix.

Application—Although the application step is relatively straightforward in this case, the bank does make the adjustment of the Grade 4 PD estimate to give it the desired relationship to the adjacent rating grades. This adjustment is part of the application stage because it is made after the adjusted agency default rates are applied to the internal rating grades.

Example 2: PD Quantification Using a Merton-Type Equity-Based Model

- A bank obtains a 20-year database of North American firms with publicly-traded equity, some of which defaulted during the 20-year period.
- The bank uses the Merton approach to modeling equity in these firms as a contingent claim, constructing an estimate of each firm's distance-to-default at the start of each year in the database.[9] The bank then ranks the firm-years within the database by distance-to-default, divides the ordered observations into 15 equal groups or buckets, and computes a mean historical one-year default rate for each bucket. That default rate is taken as an estimate of the applicable PD for any obligor within the range of distance-to-default values represented by each of the 15 buckets.
- The bank next looks at all obligors with publicly-traded shares within each of its internal rating grades, applies the same Merton-type model to compute distance-to-default at quarter-end, sorts these observations into the 15 buckets from the previous step, and assigns the corresponding PD estimate.
- For each internal rating grade, the bank computes the mean of the individual obligor default probabilities and uses that average as the rating grade PD.

Process Analysis for Example 2

Data—The reference data set consists of the North American firms with publicly-traded equity in the acquired database. The reference data are described in this case by a single variable, specifically an identifier of the specific distance-to-default range from the Merton model (one of the 15 possible in this case) into which a firm falls in any year.

Estimation—The estimation step is simple: The average default rate is calculated for each distance-to-default

[9] The term ''Merton approach'' is meant to include any structural credit risk model that values equity as a contingent claim, as promulgated in the seminal work of Merton and Black and Scholes.

bucket. Since the data cover 20 years and a wide range of economic conditions, including downturn conditions, the resulting estimates satisfy the long-run average requirement.

Mapping—The bank maps selected portfolio obligors to the reference data set using the distance-to-default generated by the Merton model. However, not all obligors can be mapped, since not all have traded equity. This introduces an element of uncertainty into the mapping that requires additional analysis by the bank: Were the mapped obligors representative of other obligors in the same rating grade? The bank should demonstrate comparability between the publicly-traded portfolio obligors and those not publicly traded. It may be appropriate for the bank to make conservative adjustments to its ultimate PD estimates to compensate for the uncertainty in the mapping. The bank also should perform further analysis to demonstrate that the implied distance-to-default for each internal rating grade represented long-run expectations for obligors assigned to that rating grade; this could involve computing the Merton model for portfolio obligors over several years of relevant history that span a wide range of economic conditions.

Application—The final step is aggregation of individual obligors to the rating grade level through calculation of the mean for each rating grade, and application of this rating grade PD to all obligors in the grade. The bank might also choose to modify PD assignments further at this stage, combining PD estimates derived from other sources, introducing an appropriate degree of conservatism, or making other adjustments.

Example 3: ELGD Quantification From Internal Default Data

- For each wholesale exposure in its portfolio, a bank records collateral coverage as a percentage, as well as which of four types of collateral applies.
- A bank has retained data on all defaulted exposures since 1995. For each defaulted exposure in the database, the bank has a record of the collateral type within the same four broad categories. However, collateral coverage is only recorded at three levels (low, moderate, or high) depending on the ratio of collateral to EAD.
- The bank also records the timing and discounted value of recoveries net of workout costs for each defaulted exposure in the database.Cash flows are tracked from the date of default to a ''resolution date,'' defined as the point at which the remaining balance is less than 5 percent of the EAD. A recovery percentage is computed, equal to the value of recoveries discounted to the date of default, divided by the exposure at default.
- For each cell (each of the 12 combinations of collateral type and coverage), the bank computes a simple arithmetic mean realized loss severity percentage as the mean of one minus the recovery percentage. One of the categories has a mean realized loss severity percentage of less than zero (recoveries have exceeded exposure on average), so the bank sets the loss rate at zero.
- The bank assigns each exposure in the existing portfolio to one of the 12 cells based on collateral type and coverage. As its ELGD, the bank applies the mean historical realized loss severity percentage for that cell plus an additional five percentage points to account for the bank's relatively small number of default observations—in relation to the total number of defaults in the reference data—from years with the largest default rates.

Process Analysis for Example 3

Data—The reference data is the collection of defaults and associated loss amounts from the bank's historical portfolio. The reference data are described by the two categorical variables (level of collateral coverage and type of collateral). It would be important to determine whether the defaults over the past few years are comparable to defaults from the existing portfolio. One would also want to ask why the bank ignores potentially valuable information by converting the continuous data on collateral coverage into a categorical variable.

Estimation—Conceptually, the bank is using a loss severity model in which 12 binary variables—one for each loan coverage/type combination—explain the percentage loss. The coefficients on the variables are just the arithmetic mean realized loss figures from the reference data.

Mapping—Mapping in this case is fairly straightforward, since all the relevant characteristics of the reference data are also in the data system for the existing portfolio. However, the bank should determine whether the variables are being recorded in the same way (for example, using the same definitions of collateral types), otherwise some adjustment might be appropriate.

Application—The bank is able to apply the loss severity model by simply plugging in the relevant values for the existing portfolio (or what amounts to the same thing, looking up the cell mean). The bank's assignment of zero ELGD for one of the cells merits special attention; while the bank represented this assignment as conservative, the adjustment does not satisfy the supervisory requirement that ELGD must exceed zero. A larger upward adjustment is necessary. Finally, the upward adjustment of the mean historical realized loss severity percentages to account for the relatively small influence of downturn conditions on the realizations may be appropriate but should be the outcome of a well-documented decision process supported by empirical analysis.

Appendix B: Illustrations of the Quantification Process for Retail Portfolios

Example 1: Quantification of Segment PD

A bank that has been making indirect installment loans through furniture stores for a number of years. Seven years of internal data history are available, over a period that includes economic downturn conditions. The bank has segmented this portfolio over the entire period in a consistent manner: By bureau score, internal behavioral score and monthly disposable income. In addition, realized loss severities for this portfolio have demonstrated significant cyclical variability over the period covered by the bank's data history.

The bank can empirically show that the participating furniture retailers, underwriting criteria, and collection practices have remained reasonably stable over the seven-year period, and the definition of default has been consistent with the IRB definition. However, there are frequent changes in the bank's products and in the borrowing population that affect the risk characteristics of its loans. Therefore, in quantifying PD the bank assigns more weight to recent data within the seven-year history. The segment PD is calculated as a weighted-average of the seven annual realized historical default rates with the assigned weights progressively lower for the earlier years of the sample.

Process Analysis for Example 1

As discussed in the main chapter text, quantification processes need not be explicitly structured as four stages. The four-stage structure is a conceptual framework, and an analytical and implementation guide. However, as in other wholesale and retail examples, this bank's quantification process for PD can be interpreted in terms of the four-stage framework:

Data—The bank's own seven-year historical data serve as the reference data.

Estimation—Estimation consists of calculating a weighted-average of the annual default rates for each segment in the reference data.

Mapping—Mapping consists primarily of ensuring that the segmentation schemes and the definition of default are consistent for the reference data and the bank's existing portfolio.

Application—Application is a matter of using the PD estimate derived from the reference data for each segment of the existing portfolio in the risk-based capital formulas.

Example 2: Quantification of PD for First-lien Mortgages

• For the past four years, a mortgage lender has begun making loans in a geographic region that has experienced relatively lower default rates than the bank had experienced previously. The bank has fourteen years of internal data history. The bank has analyzed external mortgage data over the same time period and has identified risk characteristics that vary by geographic region (e.g., volatility of house prices in a region). Analysis of the internal reference data also indicates the importance of these geographic risk factors.

• The recent four-year period does not include economic downturn conditions, so the bank uses its full fourteen years of data history to reflect downturn conditions. To estimate the PD parameter over a long run of data history that is also comparable to the current portfolio, the bank develops a statistical model of the PD based on the combined internal and external performance history. The variables used as PD predictors include geographic risk factors such as the volatility of employment and house prices in the region. The model also includes borrower risk characteristics (credit score, debt-to-income ratio) and loan risk characteristics (loan-to-value ratio and tenor). Models are built for each major product type, such as fixed-rate and adjustable-rate mortgages (FRM and ARM). The model results are robust according to standard statistical diagnostic tests, and the models have continued to perform satisfactorily in validations outside the development sample.

Process Analysis for Example 2

Data—The existing portfolio of first-lien mortgages is segmented by region, LTV, credit score, tenor, mortgage type (fixed-rate or ARM), and debt-to-income ratio. For a given segment, the bank has historical data from its own portfolio. The reference data consist of fourteen years of internal performance history for loans originated between 1990 and 2003. However, only four years of those internal data cover loans for the region of the country where the bank currently has a substantial mortgage portfolio. The internal data are supplemented by external mortgage data over the full fourteen year history (1990–2003).

Estimation—The bank builds a set of statistical models for different product types in the portfolio (e.g., FRM and ARM). The models estimate segment PD as a function of the loan-to-value ratio, credit score, debt-to-income ratio, loan tenor, and measures the volatility of regional employment and house prices. The model is estimated on both the internal and external data.

Mapping—Since the bank shifted a significant amount of its first-lien mortgage business to a different region of the country with generally lower default rates starting only in 2000, the bank has only four years of internal historical data (2000–2003) reflecting the performance of its mortgage business in the new region. Its older internal data from 1990 to 1999 represent credit performance in higher-risk regions. Therefore, the bank does not have sufficient historical data representing its current mortgage business to map directly, segment by segment, to estimate the PDs of the existing portfolio on the basis of the long-run average of the annual default rates of the comparable segments in the reference data.

Instead, the bank has adopted the technique of building default prediction statistical models, based on internal and external data from the entire fourteen year history (before and since the change in the regional focus of the business in 2000) and using as causal, or independent, variables the risk drivers of mortgage default, including regional risk factors.

In this framework, mapping consists of ensuring that the segmentation systems and definition of default for the two data historical data sets and the existing portfolio are all consistently applied in the process of deriving the values of the risk drivers used as inputs to the statistical models for each segment of the existing portfolio.

Application—Application consists of using the estimated segment PDs produced by the statistical models as inputs into the residential mortgage formula for risk-based capital.

Example 3A: PD Estimation in Dollar Terms

The text defines both the historical default rate and estimated PD in unit, or account, terms. That is, the number of defaults in a segment as a proportion of the number of exposures on the balance sheet at the beginning of the time period under analysis.

• Many banks, however, prefer to, or have historically calculated the default rate in terms of dollar losses. This example shows that it is possible to derive PDs from dollar loss rates that will equal the required unit-or account-based default rates. However, a bank choosing to derive a default rate or PD in this manner must segment its portfolio properly and in a sufficiently granular manner, and must ensure that its estimates of EAD are accurate. A credit card bank directly measures its average dollars of economic loss for each segment and uses the percentage of dollars defaulted, rather than the percentage of loans defaulted, to derive the estimate of PD. Specifically, the ratio employed is the gross dollar loss divided by the exposure at default (EAD) over a one-year time horizon. The bank estimates EAD for a segment as the current outstanding balances plus the expected drawdowns on open lines (including accrued but unpaid interest and fees at the time of default) if all accounts in the segment default.

• The bank uses the appropriate IRB definition of default.

• The bank segments exposures by size of credit line and credit line utilization as well as by credit score.

• The bank regularly validates the accuracy of the EAD estimates and the consistency of the percentage-of-dollars-defaulted measure with the account-based default rate.

Process Analysis for Example 3A

Data—The historical reference data consist of measurements of the outstanding dollar balances and open credit lines for each segment at the beginning of the year. For accounts that defaulted over the following year, the gross defaulted balances (including accrued interest and fees) are also measured. The bank also tracks the number of accounts open at the beginning of the year in each segment and the number that default.

Estimation—The bank's PD parameter is estimated as the long-run average of the one-year realized default rates in dollar terms, that is the gross balances of defaulted loans divided by the estimated EAD.

The following table shows two segments of card exposures, both with

estimated default rates of 1 percent as measured from a single year of the historical reference data in the required manner in terms of numbers of accounts. In this case, the portfolio was segmented by average outstanding dollar balance and by average credit line per account. In addition, the EADs were estimated separately and accurately [10] at the segment level, with the result that the dollar-denominated default rate (gross dollar loss / EAD) is equal to the unit-or account-measured PD.

Segment	Number of Accounts in Segment	Number of Accounts that Defaulted	Required Default Rate (Unit-based)		Average Outstanding Balance per Account	Average Credit Line per Account	Total Segment Outstanding Balance	Total Segment Undrawn Lines	Estimated Segment LEQ	Estimated Segment EAD	Segment Gross Loss	Estimated Dollar-based Default Rate = Gross Loss / EAD
1	200	2	1.0%		$150	$400	$30,000	$50,000	0.9	$75,000	$750	1.0%
2	1800	18	1.0%		$300	$800	$540,000	$900,000	0.6	$1,080,000	$10,800	1.0%

However, banks that attempt to estimate default rates or PDs in dollar terms from their historical reference data are often not as accurate as the example above, and they arrive at incorrect values. Most often, this results from insufficiently granular segmentation and consequent inaccuracy in the estimation of EADs.

Because of the difficulties often encountered in dollar-denominated default and PD estimates, banks that choose this method should periodically demonstrate, as part of the validation of their PD quantification, that the dollar-derived PDs are essentially equal to those derived using an account-based definition.

Mapping—Mapping involves linking segments in the reference data to segments in the existing portfolio based on the same drivers of default risk and drawdowns.

Application—Application is generally a straightforward process, linking the estimates from segments in the reference data to segments in the existing portfolio.

Example 3B: Another Case of Dollar Estimates of PD

Once again, a bank prefers to calculate default rates or PDs in dollar terms. However, this example is based on fixed loans rather than revolving lines of credit such as the credit cards in the previous example. Because of a critical segmentation factor, the dollar-based default rates will rarely if ever equal the correct unit- or account-based rates.

- Using the cohort method for EAD discussed in the main chapter text, a bank calculates default rates or PDs as the accumulated gross dollar losses for each segment over the course of a year divided by the total outstanding dollar balances of the segment at the beginning of the year.[11]
- The bank uses the appropriate IRB definition of default.
- The bank's segmentation is not particularly granular and uses few risk drivers, such that the average balance for those accounts defaulting tended to be much greater than those that did not.

Process Analysis for Example 3B

Data—The bank has 5 years of internal data history for this particular portfolio, including numbers and dollar balances of accounts at the beginning of each year and the number and dollar balances of defaulted accounts in the course of each year. The data include economic downturn conditions.

Estimation—Because of the inadequate degree of granularity, the average January 1 dollar balances of accounts that ultimately defaulted at any time within the following year typically exceeded the beginning balances of accounts that did not default. In this case, the dollar-denominated PD (gross dollar losses divided by total beginning outstanding balances) consistently overestimated the correct (unit-based) PD. (See first line of table below, representing a single year in the historical reference data.) Conversely, if the beginning balances of accounts that ultimately defaulted were smaller than those that did not default within the following year, an unusual situation, this measure consistently underestimated PD. (See second line of table.)

Segment	Number of Accounts in Segment	Number of Accounts that Defaulted	Required Default Rate (Unit-based)		Total Segment January 1st Beginning Outstanding Balances	Average Beginning Outstanding Balance for Loans that Defaulted During Year	Average Beginning Outstanding Balance for Loans that Did Not Default	Total Segment Gross Losses	Estimated Dollar-based Default Rate = Gross Loss / EAD
1	1000	20	2.0%		$1,000,000	$1,245	$995	$24,900	2.5%
2	1000	20	2.0%		$1,000,000	$755	$1,005	$15,100	1.5%

Mapping and Application—Since the estimation stage using this approach is very likely to be flawed, the quantification should not proceed to the mapping and application stages. Rather, the bank should revise its estimation to employ the required unit-or account-based methods of calculating historical default rates and of estimating PDs before proceeding to mapping and application.

Example 4: PD Quantification With Adjustments for Seasoning

- Realized default rates for a bank's credit card portfolio exhibit a characteristic time profile by age—a seasoning curve.'' Using data from the past five years, including economic downturn conditions, the bank estimates the shapes of a family of ''seasoning curves for specific products, loan characteristics, and borrower credit quality at origination.
- The bank presents analyses indicating that the seasoning curves can be reasonably specified by borrower credit quality at origination, and the bank regularly analyzes new cohorts to capture any changes in the curves over changing economic and market environments. Systematic changes are incorporated into new seasoning curves.

[10] In this example, EADs are estimated by way of the LEQ ratio. As discussed in the main chapter text, this is only one method of estimating EAD currently in use.

[11] For simplicity, we assume no amortization of principal over the course of the year.

• The portfolio is segmented by borrower, product, and loan characteristics, including account age, or ''time on books.''

Process Analysis for Example 4

Data—The reference data consists of five years of portfolio history, including economic downturn conditions. Supplemental data from earlier periods for similar products, borrower credit quality at origination, and loan type permit the estimation of annualized default rates over the remaining expected life of the loans.

Estimation—It is necessary to calculate two different PDs for each segment of the portfolio: (1) The long-run average of one-year default rates from the historical reference data, in the same manner as for wholesale PDs, and (2) the estimated annualized cumulative default rate (''ACDR'') over the remaining expected life of the loans in the segment.

If the ACDR is larger than the long-run average of one-year rates, then seasoning effects for this segment are deemed to be material, and the ACDR must be used as the estimated segment PD. [12]

For example, if the expected remaining life for a segment of cards that has been on the books for one year, based on historical data for defaults and attrition, is six years, and the estimated cumulative default rate over that period is five percent, the ACDR = 5/6 = 0.833. If, for the same segment, the five-year average of annual default rates from the historical reference data set is 0.75, then seasoning effects are deemed to be material and the bank must use 0.833 as the PD estimate for the coming (2nd) year.

Mapping—The segmentation of the existing portfolio is the same as that employed for the reference data. This makes the mapping straightforward along the lines of product and loan characteristics and borrower credit quality.

Application—At the application stage, either the ACDR or the long-run average default rate estimated from the reference data is applied as the estimated PD to the segments in the existing portfolio respectively, depending on whether or not seasoning effects are deemed to be material.

[12] If the bank intends to sell or securitize the exposures in the segment within a 90-day time frame, the ''wholesale'' PD can be used even if the ACDR is greater than the long-run average. See the main chapter text for more details.

Example 5: Guarantees for retail exposures

Guarantees on individual retail exposures

The following are examples of retail guarantees that would qualify under Standard 4–4:

• Consider an exposure of $85,000 secured by property valued at $100,000. The guarantee covers all losses up to $85,000.

• The guarantee covers a pre-specified dollar amount of losses less than $85,000, for example a first loss position of $20,000.

• The guarantee covers a pre-specified pro rata (or proportional) share of all losses, for example up to 20 percent of the $85,000 exposure, or $17,000.

• The guarantee covers a pre-specified pro-rata or proportional share of losses, but the pre-specified pro rata share is defined in terms of the value of the property that secures the exposure. For example, in the case of the exposure cited above, the guarantee covers losses up to 12 per cent of the value of the collateral, or $12,000. (This case represents traditional Private Mortgage Insurance (PMI) for first lien residential mortgages, where insurance is typically required for loan-to-value (''LTV'') ratios above 80 percent; for LTVs up to 85 percent, the typical requirement is for PMI in an amount equal to 12 percent of the value of the property.)

Guarantees of Multiple Retail Exposures

Guarantees of multiple retail exposures that involve tranching of the aggregate credit risk of the underlying exposures do not qualify under Standard 4–4. Such guarantees may qualify for treatment as synthetic securitizations (provided they meet all other requirements for securitization treatment) as specified in Standard 4–5 and succeeding paragraphs. Other guarantees of multiple retail exposures where there is no tranching of the aggregate credit risk, such as those in the following examples, may qualify under Standard 4–4:

• In some cases, a guarantee covers multiple retail exposures; however, coverage for each individual exposure meets all the requirements of Standard 4–4 and succeeding paragraphs and is consistent with any one of the four examples above. Furthermore, there are no additional limits, caps, or restrictions of any kind pertaining to the aggregate coverage. Such guarantees would meet the requirements as guarantees of individual retail exposures.

—Consider a guarantee that covers multiple retail exposures, with a total exposure amount of $9.5 million secured by 100 residential properties each with a value of $100,000, thus an aggregate value of $10 million. The guarantee covers losses on each exposure up to an amount that will reduce the LTV on each exposure considered separately to 90 percent.

• Other guarantees on multiple retail exposures qualify under Standard 4–4, but only if they cover all or a pro rata, or proportional, share of all payments due on the aggregate exposure amount.

—Consider the same multiple-exposure retail pool as before. There are 100 retail exposures with an aggregate exposure amount of $9.5 million. The guarantee covers all losses on the underlying exposures up to the full $9.5 million aggregate exposure amount.

—Once again, consider the pool of multiple retail exposures above. In this case, the guarantee covers a pro rata share of losses, for example 20 percent of the $9.5 million aggregate exposure, or $1.9 million. (Alternatively, if the guarantee coverage had been pre-specified as a dollar amount, say the first $1.9 million of losses, rather than a pro rata share of the aggregate losses, that guarantee would not reflect the benefits of retail credit risk mitigation treatment. Such guarantees of multiple retail exposures would need to meet the requirements set forth in Standard 4–5 in order to qualify for securitization treatment.)

Chapter 5: Wholesale Credit Risk Protection

Rule Requirements

Part III, Section 22(e): Double default treatment. A bank must obtain the prior written approval of [AGENCY] under section 34 [of the NPR] to use the double default treatment.

Part IV, Section 33: Guarantees and Credit Derivatives: PD Substitution and LGD Adjustment Treatments

Part IV, Section 34: Guarantees and Credit Derivatives: Double Default Treatment

1. This chapter supplements the detailed discussion of credit risk mitigation in the NPR by providing guidance on how banks may recognize contractual arrangements for exposure-level credit protection—eligible guarantees and eligible credit derivatives—that transfer risk to one or more third parties. Each of these forms of credit protection must meet certain specific standards of eligibility, as articulated in the NPR, for recognition of the associated risk mitigation.

2. An important aspect of either of these types of credit protection is that they are implemented at the exposure-

level, reducing credit risk faced by the bank due to a specific exposure to an individual obligor. Banks may use similar mitigants—for example, portfolio credit derivatives—to transfer credit risk associated with groups of exposures or whole portfolios. While such contracts may make a valuable contribution to broader risk management within the bank, and may be appropriately considered in an assessment of overall capital adequacy, their effects are not recognized for IRB calculations of risk-based capital requirements except in limited circumstances.

3. Exceptions are made for certain types of basket credit derivatives and securitization exposures. In addition, banks may recognize the benefits in IRB calculations of pool-level guarantees (or credit derivatives) that are the functional equivalent of an exposure-by-exposure guarantee provided the following minimum conditions are met:

- The guarantee is an eligible guarantee.
- The contractual provisions of the guarantee must identify the specific exposures in the pool to which the guarantee applies.
- The guarantee must cover all or a pro-rata share of the pool's aggregate credit losses in a manner that ensures each individual exposure is provided the same level of loss protection under the guarantee.
- The guarantee must not contain cap provisions, deductibles, or other payout limitations that would effectively limit coverage.

Once a bank demonstrates that the pool-level guarantee is the functional equivalent of an exposure-by-exposure guarantee, the benefits may be recognized in the IRB calculations using the credit risk mitigation framework as provided in the NPR and this document. This requires that the bank calculate its risk-based capital requirement for the pool on an exposure-by-exposure basis, as if the guarantee were applied at the level of each individual exposure.

S 5–1 Risk-based capital benefits are only recognized for credit protection that transfers credit risk to third parties.

4. Banks may recognize the risk-based capital benefits of credit protection associated with eligible guarantees and eligible credit derivatives from third parties. A bank may recognize the benefits of credit protection from a parent or sister company only if (a) the credit protection provider has the ability to fulfill its obligations to the bank independent of the financial support of the bank, and (b) the internal risk rating assigned to the affiliate fully excludes any support that is or may be derived from bank operations. Under no circumstances may a bank receive a risk-based capital benefit from credit protection from an internal department of the bank or from the bank's own subsidiary. Banks often manage credit risk through internal transactions that, while possibly structured in ways similar to guarantees or credit derivatives, do not in themselves result in a reduction of credit risk at the consolidated level. Such credit protection purchased internally may not be recognized for IRB purposes. Once the bank reliably demonstrates that the credit risk is ultimately transferred to a third party, for example through a matched offsetting contract, credit protection may be realized from the third party provider. However, if this protection provider is an affiliate, all of the above limitations apply.

5. For wholesale exposures, credit risk mitigation from eligible guarantees and eligible credit derivatives is recognized through one of three mutually exclusive approaches. The approaches are identified by the primary mechanism through which risk mitigation is recognized: PD substitution, LGD adjustment, or the recognition of double-default benefits. Recognition is at the exposure level, so a bank may select among the three alternative approaches for each wholesale exposure, subject to the NPR and to relevant elements of the bank's internal policies and procedures.

6. If a bank chooses to recognize credit protection through PD substitution, it substitutes the PD associated with the internal rating grade assigned to the protection provider in place of the PD of the obligor in the capital calculation. However, if the bank determines that this substitution overstates the degree of risk mitigation, a lesser adjustment may be made by using a PD associated with any internal rating grade inferior to that of the protection provider. Note that in either case, the PD applied is one that is associated with one of the bank's internal rating grades, determined in accordance with the bank's established processes for quantifying the default risk of those grades. Similar considerations apply in the case of double-default treatment; the PD for the protection provider used in the capital calculation should be the PD for an internal rating grade assigned to the protection provider.

7. Under the LGD adjustment approach, the bank modifies the LGD assigned to the hedged exposure to reflect the risk mitigating effects of the credit protection, subject to limitations on the resulting risk weight as specified in the NPR. In determining the magnitude of any LGD adjustment, the bank should apply the general approach to IRB quantification developed elsewhere in this guidance; quantification of LGD adjustments for credit protection should reflect a rigorous application of standards no different from those that apply to LGD quantification generally.

8. The NPR specifies various criteria that must be met in order for a bank to apply the double default treatment. Among those requirements are that a bank must have policies and processes to detect excessive correlation between the creditworthiness of the protection provider and the obligor for the hedged exposure. For example, the creditworthiness of a protection provider and an obligor would be excessively correlated if the obligor derives a high proportion of its income or revenue from transactions with the protection provider. Similarly, excessive correlation could arise from exposure to a common risk factor or set of risk factors, such as industry or region; in some cases a bank may be able to leverage other components of the bank's internal credit risk management processes to identify such dependence on common risk factors.

9. A bank's choice among these approaches for reflecting the impact of credit protection for a given exposure should be made in accordance with specific criteria contained in a bank's credit policy. In addition to the specific eligibility requirements in the NPR and general consideration of the credit protection provider's ability and willingness to perform under the agreement, the criteria should include an assessment of the effect of the payout structure of the credit protection on the level and timing of recoveries. In some cases, the nature of the contractual arrangement reduces the likelihood that the bank will experience an obligor default (as defined within the IRB framework); in such cases, PD substitution (or double-default treatment, if applicable) is often more appropriate. In other cases, notably those in which the protection is likely to come into effect only after a default has occurred, it is more likely that the appropriate adjustment should be made through LGD.

10. A bank recognizing risk mitigation from eligible guarantees or eligible credit derivatives should also have policies that ensure adequate control of any residual risks related to the use of such forms of credit protection.

S 5–2 Banks must ensure that credit protection for which risk-based capital

benefits are claimed represents unconditional and legally binding commitments to pay on the part of the guarantors or counterparties.

11. As specified in the NPR, forms of written third-party support that are conditional or are not legally binding are not recognized as credit risk mitigation. Refer to Standard 2–11 in the Wholesale Risk Rating Systems chapter of this guidance regarding the use of implied support as a rating criterion.

12. In some instances, an eligible credit derivative may incorporate a reference asset that differs from the underlying asset for which a bank has acquired credit protection. A bank may recognize an eligible credit derivative that hedges an exposure that is different from the credit derivative's reference exposure used for determining the derivative's cash settlement value, deliverable obligation, or occurrence of a credit event only if:

- The reference exposure ranks *pari passu* (that is, equal) or junior to the hedged exposure; and
- The reference exposure and the hedged exposure share the same obligor (that is, the same legal entity) and legally enforceable cross-default or cross-acceleration clauses are in place.

13. In such cases, a bank should evaluate and document the relationship between the reference asset and the hedged exposure to ensure that the reference asset is a reasonable proxy for the hedged exposure and is likely to behave in a similar manner upon the occurrence of a credit event.

Chapter 6: Data Management and Maintenance

Rule Requirements

Part III, Section 22(i)(1): A bank must have data management and maintenance systems that adequately support all aspects of its advanced systems and the timely and accurate reporting of risk-based capital requirements.

Part III, Section 22(i)(2): A bank must retain data using an electronic format that allows timely retrieval of data for analysis, validation, reporting, and disclosure purposes.

Part III, Section 22(i)(3): A bank must retain sufficient data elements related to key risk drivers to permit adequate monitoring, validation, and refinement of its advanced systems.

I. Overview

1. Banks using the IRB framework for risk-based capital purposes must have advanced data management and maintenance systems that support credible and reliable risk parameter estimates. This chapter describes how a bank should collect, maintain, and manage the data needed to support the other IRB system components for wholesale and retail exposures (e.g., risk rating and segmentation systems, the quantification process, and validation and other control processes), as well as the bank's broader risk management and reporting needs. Additional detail specific to wholesale and retail exposures is provided in the appendices to this chapter.

2. While this chapter specifically addresses data management and maintenance systems for wholesale and retail exposures, the framework outlined in this chapter generally applies to all of a bank's advanced systems for credit risk as described in Chapter 1 of this guidance. In addition, specific data requirements for securitizations are described in Chapter 11.

3. Banks may implement different data management and maintenance systems for wholesale and retail exposures. Within a bank, moreover, such data systems and processes may differ across business lines and countries. Therefore, the data structures and practices, and the precise data elements to be collected will be dictated by the features and methodology of the IRB system employed by each bank.

4. Reference data requirements related to IRB quantification, which are discussed in Chapter 4 of this guidance, describe the minimum requirements for historical default and loss reference data using the best available data for quantification, inclusive of internal, external or pooled data sets. Best available data should include historical performance information necessary to accurately estimate risk parameters for exposures in the bank's existing portfolio. Reference data for quantification are likely to comprise a smaller subset of the internal data elements cited in this chapter because the objectives of ongoing internal data management cover a wider range of purposes, such as the development of risk ratings or segmentation and the validation of the IRB system. Data histories built from the internal data maintenance framework described in this chapter will gain growing significance in the risk parameter estimation process over time.

II. General Data Requirements

S 6–1 Banks must collect and maintain sufficient data to support their IRB systems.

5. While banks have substantial flexibility in designing their data management systems, the underlying principle in this guidance is that the data systems should be of sufficient depth, scope, and reliability to implement and evaluate the IRB system. The systems should be able to support the bank's ability to:

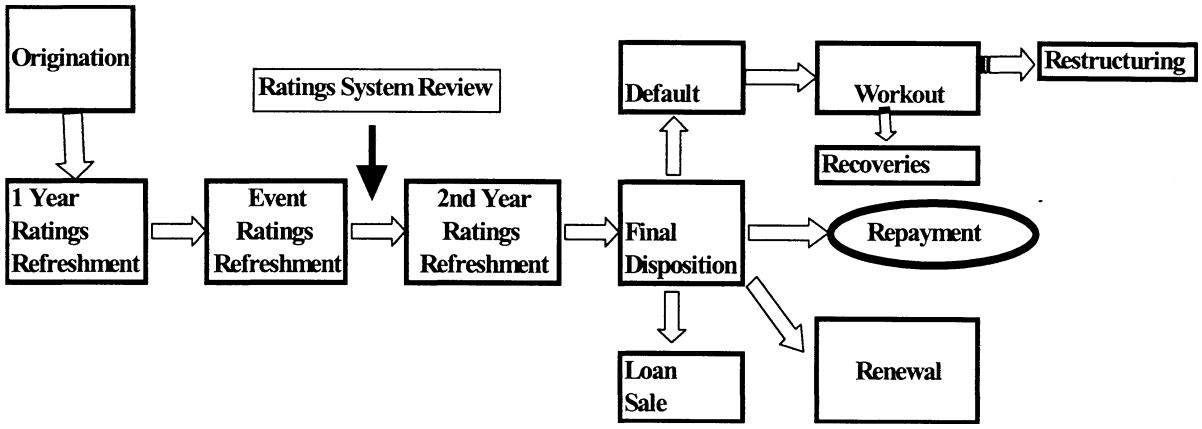
- Track obligors of wholesale exposures and to track wholesale exposures throughout their life cycle from origination to disposition;
- Capture all rating assignment data for wholesale portfolios, which include the significant quantitative and qualitative factors used to assign the obligor and loss severity ratings;
- Capture exposure and borrower characteristics and performance history for retail exposures over a historical time period;
- Capture all data for retail exposures necessary to develop the segmentation system and to assign exposures to segments;
- Develop internal risk parameter estimates;
- Validate risk parameter estimates;
- Validate the IRB system and processes;
- Refine the IRB system;
- Calculate risk-based capital ratios; and
- Produce internal and public reports.

6. Data management and maintenance systems should enable banks to undertake necessary changes in their IRB systems and improve methods of credit risk management over time. Systems should be capable of providing detailed historical data and capturing new data elements for enhancing an IRB system. Given the importance of developing robust data histories in this process and the costs associated with collecting additional data at a later date, banks should err on the side of collecting not only data that they are currently using but also data that may potentially be useful to their IRB models or in validation processes.

A. Life Cycle Tracking for Wholesale Exposures

S 6–4 For wholesale exposures, banks must collect, maintain, and analyze essential data for obligors and exposures. This should be done throughout the life and disposition of the credit exposure.

7. Using a life cycle or ''cradle to grave'' concept for each obligor and exposure supports front-end validation, backtesting, system refinements, and risk parameter estimates. A depiction of life-cycle tracking follows:



8. Data elements must be recorded at origination and whenever the rating is reviewed, regardless of whether the rating is changed. Data elements associated with current and past ratings must be retained. These elements include:

- Key borrower and exposure characteristics;
- Ratings for obligors and exposures;
- Key factors used to assign the ratings;
- Person responsible for assigning the rating and model(s) used in that assignment;
- Date rating assigned; and
- Overrides to the rating and authorizing individual.

At disposition, data elements should include:

- Nature of disposition: Renewal, repayment, loan sale, default, restructuring;
- For defaults: Exposure, actual recoveries, source of recoveries, costs of workouts and timing of recoveries and costs;
- Guarantor support;
- Sale price for loans sold; and
- Other key elements that the bank deems necessary.

See Appendix A for examples of data elements that banks should collect and maintain under an IRB data management framework for wholesale exposures.

B. Rating Assignment Data for Wholesale Exposures

S 6–3 Banks must capture and maintain all significant factors used to assign obligor and loss severity ratings.

9. Assigning a rating to an obligor requires the systematic collection of various borrower characteristics, both quantitative and qualitative, because these factors are critical to validating the rating system. Obligors are rated using various methods, as discussed in Chapter 2. Each of these methods presents different challenges for input collection. For example, in judgmental rating systems, the qualitative factors used in the rating decision have not traditionally been explicitly recorded. For purposes of the IRB framework, to the extent qualitative factors play an important role in assigning ratings, banks should maintain these factors in a readily available database for validation purposes and to facilitate analysis to help banks improve the rating system over time.

10. For loss severity estimates, banks should record the basic structural characteristics of exposures and the factors used in developing the loss severity rating or LGD estimate. These often include the seniority of the credit, the amount and type of collateral, the most recent collateral valuation date and the collateral's fair value.

11. Banks should also track any overrides of the obligor or loss severity rating. Tracking overrides separately allows banks to identify whether the outcome of such overrides suggests either problems with rating criteria or too much discretion to adjust the ratings.

12. Historical data, including rating histories on wholesale exposures, may be lost or irretrievable; for example, when exposures are acquired through mergers, acquisitions, or portfolio purchases. Banks are encouraged, whenever practical, to collect any missing historical data on rating assignment drivers and to re-rate the acquired obligors and exposures for prior periods. When retrieving historical data is not practical, banks may attempt to create a rating history by carefully mapping the legacy system and the new rating structure. Mapped ratings should be reviewed for accuracy. The level of effort placed on filling gaps in data should be commensurate with the size and significance of the exposures to be incorporated into the bank's IRB system.

C. Segmentation Data for Retail Exposures

S 6–4 For retail exposures, banks must collect and maintain all essential data elements used in segmentation systems and the quantification process. The data must cover a period of at least five years and must include a period of economic downturn conditions, or the bank must adjust its estimates of risk parameters to compensate for the lack of data from periods of economic downturn conditions.

13. Banks should maintain a minimum five-year exposure-level history of the entire retail portfolio, including all exposures and lines that were open at any time during this period. The standard above establishes key risk drivers used in the segmentation system and in the quantification of the risk parameters. However, banks should retain additional data elements that are used in their internal credit risk management systems. (See Appendix A of this chapter for examples of retail data elements.)

14. For retail exposures, if the most recent period of economic downturn conditions occurred more than five years ago, banks should retain additional data to cover the downturn period. These data need not cover the period between the downturn period and the most recent five-year period. These data may be in the form of representative statistical samples of the portfolio rather than data from all exposures. The method of any sampling should be statistically sound and well-documented.

15. Banks should gather and retain disposition data, including recovery data on defaulted exposures (e.g., date and dollar value of recoveries and collection expenses) sufficient to develop ELGD, LGD, and EAD estimates for retail exposures. For many banks, information related to recoveries and

collection expenses currently exists only at an aggregate level. These banks should develop interim solutions and a plan to improve exposure-level data availability.

16. For retail exposures, historical segmentation data can be lost or irretrievable; for example, when exposures are acquired through mergers, acquisitions, or portfolio purchases. In these cases, as an interim measure, banks should seek to obtain data from external sources to supplement internal data shortfalls. Alternatively, the reference data sometimes may be drawn from other sections of the portfolio, but only when the business lines, and exposure and borrower characteristics are sufficiently similar (for examples, see Chapter 3).

D. Outsourced Activities

S 6–5 Banks should ensure that outsourced activities performed by third parties are supported by sufficient data to meet IRB requirements.

17. Certain processes, such as loan servicing, broker and correspondent origination, collection, and asset management, may be outsourced to or otherwise involve third parties. The necessary data capture and oversight of risk management standards for these portfolios and processes should be carried out as if they were conducted internally.

E. Asset Sales

S 6–6 Banks should maintain data to allow for a thorough review of asset sale transactions.

18. It is important that banks be able to quantify the impact of asset sale activity on its IRB system. Documentation for these transactions should be sufficient for supervisors to determine how asset sale activity affects the integrity of the IRB system and the resulting risk-based capital calculation. For retail, asset sales may involve exposures from a variety of portfolio segments, and sale pricing may not be available at a granular level. A bank should be able to quantify the effect of removing a portion of the loans or other exposures from segments and the effect of such asset sale activity on risk parameter estimation.

III. Data Applications

A. Validation and Refinement

19. The data elements collected by banks should facilitate meeting the validation standards described in Chapter 7. These standards include validating the bank's IRB system processes, including the ''front end'' aspects, such as assigning ratings or risk drivers used for segmentation, so that issues can be identified early. The data should support efforts to identify whether raters and models are following rating criteria and policies and whether ratings are consistent across portfolios. In addition, data should support the validation of risk parameters, particularly the comparison of realized outcomes with estimates. For backtesting risk parameters, data on default and disposition characteristics should be thorough.

20. Data for validation should be rich in scope and depth in order to provide insights on the performance of the IRB system. This can contribute to a learning environment in which refinements can be made to the systems. These potential refinements include enhancements to rating assignment controls, segmentation design, processes, criteria or models, IRB system architecture, and risk parameter estimates.

B. Applying IRB System Improvements Historically

21. To maintain a consistent series of information for credit risk monitoring and validation purposes, banks should be able to take improvements they make to their risk rating systems for wholesale exposures and segmentation systems for retail exposures and apply them historically. Moreover, banks are encouraged to retain data beyond the minimum requirements because they should have robust historical databases containing key risk drivers and performance components over as long a historical period and as many variables as possible to facilitate the development and validation of better models and methods.

See Appendix B for an example as to how a bank could apply new information to improve its risk rating system.

C. Calculating Risk-Based Capital Ratios and Reporting to the Public

22. Data retained by the bank will be essential for risk-based capital calculations and public reporting under the Pillar 3 disclosures. These uses underscore the need for a well-defined data management framework and strong controls over data integrity. Total exposures should be tied to systems of record and documentation should be maintained for this process for all reporting periods. Control processes and data elements themselves should also be subject to periodic verification and testing by internal auditors. Supervisors should rely on these processes and should also perform testing as circumstances warrant.

23. This guidance should also be considered with the Proposed Agency Information Collections published by the Agencies on September 25, 2006 for public comment along with the NPR. The notice contained information collection templates (FFIEC 101) and information about the components of reporting entities' risk-based capital, risk-weighted assets by type of credit risk exposure under the IRB framework, including templates for credit risk and definitions of the data elements contained therein. These templates will assist banks in determining their data retention needs related to the risk-based capital requirements for credit risk under the IRB framework.

D. Supporting Risk Management

24. The information that can be gleaned from more extensive data collection will support a broad range of risk management activities. Risk management functions will rely on accurate and timely data to track credit quality, make informed portfolio risk mitigation decisions, and perform portfolio stress tests. Obligor and loss severity risk rating and segmentation data will be used to support such operations as internal capital allocation models, pricing models, ALLL calculations, and performance management measures. Summaries of these are included in reports to banks' boards of directors, regulators, and in public disclosures.

IV. Managing Data Quality and Integrity

S 6–7 Banks should develop policies and controls around the integrity of the data maintained both internally and through third parties.

25. Because data are collected at so many different stages involving a variety of groups and individuals, ensuring the quality of the data poses numerous challenges. For example:

- Qualitative risk-rating variables will have subjective elements and will be open to interpretation;
- Exposures will be acquired through mergers and purchases, but without an adequate and easily retrievable institutional rating history; and
- Data purchased from or maintained through third parties may not have controls similar to the bank's controls.

Bank policies and controls should address these potential challenges. Specifically, banks should have policies employing change control management processes and practices to ensure the integrity of the data. In addition, banks should seek reasonable assurances from significant third-party providers concerning the integrity of the data.

A. Documentation and Definitions

S 6–8 Banks should document the process for delivering, retaining, and updating inputs to the data warehouse and ensuring data integrity.

S 6–9 Banks must maintain detailed documentation of changes to the data elements supporting the IRB system.

26. Given the many challenges presented by data for an IRB system, the management of data should be formalized and banks should develop comprehensive definitions for their data elements. Fully documenting how the bank's flow of data is managed provides a means of evaluating whether the data management framework is functioning as intended. Moreover, banks should be able to communicate to persons developing or delivering various data the precise definition of the items intended to be collected. Consequently, a ''data dictionary'' and/or a ''data standards manual'' would ensure consistent inputs from business units and data vendors and would allow third parties (e.g., IRB system review process, auditors, or banking supervisors) to evaluate data quality and integrity.

27. When changes are made to the IRB system and the supporting data elements, the source of any significant changes in the risk-based capital requirements should be documented. Therefore, it would be desirable to use change control management processes.

B. Electronic Storage and Access

S 6–10 Banks must retain data using an electronic format that allows timely retrieval of data for analysis, validation, reporting, and disclosure purposes.

28. To meet the significant data management challenges presented by the validation and control features of the IRB system, banks must store their data electronically. Banks will have a variety of storage techniques and potentially a variety of systems to create their data warehouses and data marts. The data architecture should be designed to be scalable to allow for growth in portfolios, data elements, history, and product scope. IRB data requirements can be achieved by melding together existing accounting, servicing, processing, workout and risk management systems, provided the linkages between these systems are well-documented and include sufficient edit and integrity checks to ensure that the data can be used reliably.

29. Banks lacking electronic databases for wholesale exposures would be forced to resort to manual reviews of paper files for ongoing backtesting and ad hoc ''forensic'' data mining and would be unable to perform that work in the timely and comprehensive manner required of the IRB system. Forensic mining of paper files to build an initial data warehouse from the bank's credit history is encouraged. Paper research may sometimes be necessary to identify data elements or factors not originally considered significant in estimating the risk of a particular class of obligor or exposure. The time and expense of this recovery effort highlights the importance of collecting a broad array of variables during the initial design of the IRB data system.

Appendix A: Data Elements for Wholesale and Retail Exposures

For illustrative purposes, the following section provides examples of the kinds of data elements banks should collect under an IRB data management and maintenance framework first for wholesale exposures and second for retail exposures.

A. Examples of Data Elements for Wholesale Exposures

General Descriptive Obligor and Exposure Data

The data below could be from an exposure record or from various sources within the data warehouse. Data maintained for guarantors would be the same as that maintained for obligors.

Obligor/Guarantor Data

- General data: name, address, industry;
- ID number (unique for all related parent/sub relationships);
- Rating, date, and rater; and
- PD corresponding to rating.

General Exposure Characteristics

- Exposure amounts: committed, outstanding;
- Exposure type: term, revolver, bullet, amortizing, etc.;
- Purpose: acquisition, expansion, liquidity, inventory, working capital etc.;
- Covenants;
- Exposure ID number;
- Origination and maturity dates;
- Last renewal date;
- Obligor ID link;
- Rating, date and rater;
- ELGD;
- LGD; and
- EAD.

Rating Assignment Data

The data below provide an example of the categories and types of data that banks should retain in order to continually validate and improve rating systems. These data items should tie directly to the documented criteria that the bank employs when assigning ratings. For example, rating criteria often include ranges of leverage or cash flow for a particular obligor rating. In addition, banks are encouraged to develop and record quantitative representations of qualitative factors (such as management effectiveness) in numeric form. For example, a 1 may signify exceptionally strong management and a 5 very weak management. The rating data elements should be sufficient for evaluating the factors driving the rating decisions.

Quantitative factors in obligor ratings

- Asset and sale size; and
- Key ratios used in rating criteria:

—Profitability;
—Cash flow;
—Leverage;
—Liquidity; and
—Other relevant factors.

Qualitative factors in obligor ratings

- Quality of earnings and cash flow;
- Management effectiveness, reliability;
- Strategic direction, industry outlook, position;
- Country factors and political risk; and
- Other relevant factors.

Third-party obligor ratings

- Public debt rating and trend; and
- External credit model score and trend.

Rating Notations

- Flag for overrides or exceptions; and
- Authorized individual who can change rating.

Key exposure factors in ELGD and LGD ratings

- Seniority;
- Collateral type (cash, marketable securities, AR, stock, RE, etc.);
- Collateral value and valuation date;
- Advance rates, LTV;
- Industry; and
- Geography.

Rating Notations

- Flag for overrides or exceptions; and
- Authorized individual who can change rating.

Final disposition data

Many banks maintain subsidiary systems for their problem exposures with details recorded, at times manually, on systems that are not linked to the bank's central exposure or risk management systems. The unlinked

data are a significant hindrance in developing reliable risk parameter estimates.

In advanced systems, the ''grave'' portion of obligor and exposure tracking is essential for producing and validating risk parameter estimates and is an important feedback mechanism for adjusting and improving these estimates over time. Essential data elements are outlined below.

Obligor/guarantor

- Default date; and
- Circumstances of default (e.g., nonaccrual, bankruptcy chapters 7–11, nonpayment).

Exposure

- Outstandings at default; and
- Amounts undrawn and outstanding plus time series prior to and through default.

Disposition

- Amounts recovered and dates (including source: cash, collateral, guarantor, etc.);
- Collection cost and dates;
- Discount factors to determine economic cost of collection;
- Final disposition (e.g., restructuring or sale);
- Sales price, if applicable; and
- Accounting items (charge-offs to date, purchased discounts).

B. Examples of Data Elements for Retail Exposures

Data Elements at Origination

- Customer identifiers, such as borrower name;
- External credit bureau attributes;
- Application attributes, such as income and financial information;
- Credit scores, including custom scores or generic scores;
- Other underwriting data used in the origination process;
- Score overrides and policy exceptions;
- Origination channel, such as a third-party vendor, telemarketing, direct mail, or Internet;
- Product type and loan terms, such as line amount, interest rate, payment terms, balance transfer amount, and reward programs;
- Collateral characteristics, such as appraised value, geographic location, and loan-to-value; and
- Guarantees or other credit risk mitigants, such as PMI.

Ongoing Data Elements

- Refreshed credit bureau attributes;
- Payment history and performance characteristics, including payments, draws, fees, NSF checks, delinquency, overlimit status, and utilization;
- Collections activity, including workout or forbearance programs, restructurings, payment deferrals, re-aging and other similar programs;
- Behavior scores;
- Transaction-level information;
- Account management activities, such as line increase or decrease programs, pricing adjustments, changes in payment requirements or fee structures, and reward programs;
- Updated borrower information; and
- Updated collateral information.

Collection and recovery information

- Default date;
- Loss severity information;
- Circumstances of default (e.g., nonaccrual, bankruptcy chapters 7–11, nonpayment);
- Outstandings at default;
- Amounts undrawn and outstanding plus time series prior to and through default;
- Amounts recovered and dates (including source: cash, collateral, guarantor, etc.);
- Collection cost and timing;
- Discount factors to determine economic cost of collection;
- Final disposition (e.g., restructuring or sale);
- Sales price, if applicable; and
- Accounting items (charge-offs to date, purchased discounts).

Appendix B: Applying Risk Rating System Improvements Historically

In the example below for wholesale exposures, a bank experiences unexpected and rapid migrations and defaults in its rating grade 4 category during 2006. Analysis of the actual financial condition of borrowers that defaulted compared with those that did not suggests that the debt-to-EBITDA range for its expert judgment criteria of 3.0 to 5.5 is too broad. Research indicates that rating grade 4 should be redefined to include only borrowers with debt-to-EBITDA ratios of 3.0–4.5 and that rating grade 5 should be 4.5–6.5. In 2007, the change is initiated, but prior years' numbers are not recast (see Exhibit A). Consequently, a break in the series prevents the bank from evaluating credit quality changes over several years and from identifying whether applying the new rating criteria historically provides reasonable results.

Exhibit A (Revision of Grades 4 and 5 in 2007)

	Distribution of Obligor Risk Grades (%)					Change
	2004	**2005**	**2006**	**2007**	**2008**	04-'08
1	1	1.1	1.2	1.2	1.3	0.3
2	10	11	12	13	13	3.0
3	22	23	24	26	25	3.0
4	*30*	*30*	*32*	**16**	**17**	**(13.0)**
5	*20*	*21*	*19*	**33**	**34**	**14.0**
6	8	7	7	7	6	(2.0)
7	4	4	3	2	1	(3.0)
D	5	2.9	1.8	1.8	2.7	(2.3)
Total	100	100	100	100	100	0

Recognizing the need to provide senior managers and board members with a consistent risk trend, the new criteria are applied historically to obligors in rating grades 4 and 5 (see Exhibit B). The original ratings assigned to the rating grades are maintained along with notations describing what the grade would be under the new rating criteria. If the precise weight an expert has given one of the redefined criteria is unknown, banks are expected to make estimates on a best efforts basis. After the retroactive reassignment process, the bank observes that the mix of obligors in rating grade 5 declined somewhat over the past several years while the mix in rating grade 4 increased slightly. This contrasts with the trend identified before the retroactive reassignment. The result is that the multiyear transition statistics for rating grades 4 and 5 provide risk managers a clearer picture of risk.

Exhibit B (After Recasting 2004-06)

	Distribution of Obligor Risk Grades (%)					Change
	2004	**2005**	**2006**	**2007**	**2008**	04-'08
1	1	1.1	1.2	1.2	1.3	0.3
2	10	11	12	13	13	3.0
3	22	23	24	26	25	3.0
4	***15***	***15***	***16***	**16**	**17**	**2.0**
5	***35***	***36***	***35***	**33**	**34**	**(1.0)**
6	8	7	7	7	6	(2.0)
7	4	4	3	2	1	(3.0)
D	5	2.9	1.8	1.8	2.7	(2.3)
Total	100	100	100	100	100	0

This example is based on applying ratings historically using data already collected by the bank. However, for some risk rating system refinements, banks may in the future identify drivers of default or loss that might not have been collected for borrowers or exposures in the past. That is why banks are encouraged to collect data that they believe may serve as stronger predictors of default in the future. For example, certain elements of a borrower's cash flow might currently be suspected of overstating the operational health of a particular industry. In the future, should a bank decide to reduce the weight given to cash flow for this overstatement, resulting in a downgrade of many obligor ratings, the bank that collected these data could apply this rating change to prior years. This would provide a consistent picture of risk over time and also present opportunities to validate the new criteria using historical data. Recognizing that banks will not be able to anticipate fully the data they might find useful in the future, banks are expected to reassign rating grades on a best efforts basis when practical.

Chapter 7: Controls and Validation

Rule Requirements

Part III, Section 22(a)(2): The systems and processes used by a bank for risk-based capital purposes under [the NPR] must be consistent with the bank's internal risk management processes and management information reporting systems.

Part III, Section 22(j)(2): The bank's board of directors (or a designated committee of the board) must at least annually evaluate the effectiveness of, and approve, the bank's advanced systems.

Part III, Section 22(j)(3): A bank must have an effective system of controls and oversight that:

(i) Ensures ongoing compliance with the qualification requirements [in the NPR];

(ii) Maintains the integrity, reliability, and accuracy of the bank's advanced systems; and

(iii) Includes adequate governance and project management processes.

Part III, Section 22(j)(4): The bank must validate, on an ongoing basis, its advanced systems. The bank's validation process must be independent of the advanced systems' development, implementation, and operation, or the validation process must be subjected to an independent review of its adequacy and effectiveness. Validation must include:

(i) The evaluation of the conceptual soundness of (including developmental evidence supporting) the advanced systems;

(ii) An on-going monitoring process that includes verification of processes and benchmarking; and

(iii) An outcomes analysis process that includes backtesting.

Part III, Section 22(j)(5): The bank must have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the bank's advanced systems and reports its findings to the bank's board of directors (or a committee thereof).

I. Overview

1. A bank must have a system of controls that ensures that the components of the IRB system are functioning effectively. This chapter provides guidance on the essential elements of an effective control environment for an IRB system for wholesale and retail exposures, including independent review processes, a comprehensive validation process, and an internal audit review and reporting process.

2. While this chapter specifically addresses the control framework supporting a bank's IRB systems for wholesale and retail exposures, the framework outlined in this chapter generally applies to all of a bank's advanced systems for credit risk as described in Chapter 1 of this guidance.

In addition, specific validation requirements for certain counterparty credit risk transactions, equity exposures, and securitization exposures are provided in Chapters 9, 10, and 11, respectively.

S 7–1 Banks must have an effective system of controls that ensures ongoing compliance with the qualification requirements, maintains the integrity, reliability, and accuracy of the IRB system, and includes adequate governance and project management processes.

3. An accurate and reliable IRB system will allow bank management to make informed risk management and capital management decisions. While banks have flexibility in determining how integrity in the IRB system is achieved, the control framework that supports the IRB system should be constructed to ensure that the IRB system's design and performance are effective and that it continues to operate as intended.

4. The specific IRB-system controls, as outlined in this chapter as well as in Chapter 1 of this guidance, should be part of a broader control infrastructure that embodies more generic control principles such as dual controls, separation of duties, and appropriateness of incentives that enable prudential corporate oversight.

S 7–2 Control processes should be independent and transparent to supervisors and auditors.

5. The objective of independence is to ensure the integrity of the IRB system. When independence is not fully achieved, there should be compensating controls to confirm that actions and conclusions are not compromised.

6. Independence can be achieved structurally with organizational separation, or functionally, through policy and/or incentive based separation. For example, reviews performed by individuals who are not structurally independent could be acceptable as functionally independent reviews if the structure does not inhibit an objective evaluation. In these cases, job responsibilities and reporting relationships should be assessed to determine if they present any inherent conflicts that could impede conducting an effective review. Banks should consider a variety of factors when designing a control structure to adequately address independence, including:

- Expertise and experience of individuals conducting control activities;
- Potential for conflicts of interest and influence that could compromise the effectiveness of controls;
- Incentives for individuals that perform critical reviews;
- Separation of duties (individuals should not review their own work); and
- Fully documenting all aspects of the control structure to ensure it can be understood and evaluated by supervisors and auditors.

II. Reviews of the IRB System

S 7–3 The annual assessment of the IRB system presented to the board of directors should be supported by the bank's comprehensive and independent reviews of the IRB system.

7. As discussed in Chapter 1, the bank's board of directors must at least annually evaluate the effectiveness of, and approve, the bank's advanced systems for credit risk. To do so, the board should be provided with information that would enable it to conclude, with reasonable assurance, that management has appropriate processes and controls in place that support an effective IRB system. This information should include results from the bank's comprehensive and independent reviews of the IRB system.

8. The bank's independent review process may be tailored to the bank's management and oversight framework. The objective of these reviews should be to evaluate compliance with the requirements in the NPR and this supervisory guidance and to measure the effectiveness of the IRB system's design and operation. The review should include all components of the IRB system:

- Risk rating and segmentation systems;
- Quantification process, particularly the selection of reference data sets and risk parameter estimation techniques;
- Ongoing validation process;
- Data management and maintenance system that supports the IRB system; and
- Control infrastructure supporting the IRB system.

9. Responsibility for the review process could be distributed across multiple areas or housed within one unit, so long as the bank can demonstrate that the review process provides a comprehensive and objective assessment of the areas reviewed. Individuals performing the reviews should possess the requisite technical skills and expertise.

10. Validation will encompass some of the IRB system review standards described above. However, to the extent that validation or other control functions do not address a component of the IRB system or if they do not meet the independence requirements, a separate independent review of business-line management, risk management, and internal audit should be conducted as applicable. The validation activities, which are the evaluation of conceptual soundness (including developmental evidence), ongoing monitoring (i.e., process verification and benchmarking), and outcomes analysis (backtesting), are described in more detail later in this chapter.

S 7–4 Validation activities must be conducted independently of the advanced systems' development, implementation, and operation, or subjected to an independent assessment of their adequacy and effectiveness.

11. The developmental evidence supporting risk rating and segmentation systems' design and quantification is generally compiled by the systems' designers. This evidence should be subject to an ongoing substantive independent assessment by qualified staff. This independent review should be conducted at the time of system development and then updated whenever significant changes in methodology, data, or implementation occur.

12. Furthermore, when process verification, benchmarking, or outcomes analysis (backtesting) activities are not completed by individuals independent of the risk rating and segmentation systems' design or use, these activities must be the focus of an ongoing substantive independent assessment. Responsibility for the assessment of developmental evidence and ongoing validation may be drawn from a variety of organizational structures provided functional independence and sufficient expertise are demonstrated.

III. Consistency Between IRB Systems and Risk Management Processes

S 7–5 The systems and processes used by a bank for risk-based capital purposes must be consistent with the bank's internal risk management processes and management information reporting systems.

13. The systems and processes a bank uses for risk-based capital purposes must be consistent with the bank's internal credit risk management processes and management information reporting systems such that data from the latter system and processes can be used to verify the reasonableness of the risk parameter inputs the bank uses for risk-based capital purposes.

14. The wholesale risk ratings used for risk-based capital purposes should be consistent with those used to guide day-to-day wholesale credit risk management activities. Wholesale risk ratings for IRB purposes should be

incorporated into and be consistent with a bank's credit risk management, internal capital assessment and planning, and corporate governance processes. The different uses and applications of the risk rating systems' outputs should promote greater accuracy and consistency of ratings across an organization. Banks should demonstrate that ratings used for IRB purposes are consistent with the bank's internal credit risk management processes.

15. The risk drivers used for IRB retail segmentation should be consistent with those used to guide day-to-day retail credit risk management activities. Risk drivers for IRB segmentation purposes should correspond to risk drivers used as part of the overall credit risk management of business lines. Banks should demonstrate that the risk drivers used for IRB segmentation purposes are consistent with those used in its day-to-day planning, execution, and monitoring of retail lending activities. However, the IRB segmentation criteria do not have to be identical to those used in credit risk management.

16. Risk parameters used for credit risk management should be consistent with the IRB risk parameters. Banks will be afforded some flexibility in their use of estimated risk parameters, since the estimates prescribed for risk-based capital purposes may not be appropriate for other uses. For example, the PDs used to estimate loan loss allowances could reflect current economic conditions that are different from the long-term averages appropriate for risk-based capital calculations. While risk parameters used for internal risk management purposes could be different from those used for risk-based capital purposes, banks should be able to demonstrate that the IRB measures of credit risk are consistent with similar measures used in internal credit risk management.

IV. Internal Audit

S 7–6 Internal audit must, at least annually, assess the effectiveness of the controls supporting the IRB system and report its findings to the board of directors (or a committee thereof).

17. A bank must have an internal audit function that is independent of business line management and that assesses at least annually the effectiveness of the controls supporting the IRB system and reports its findings to the board of directors (or its designated committee). At least annually, internal audit should review the validation process including procedures, responsibilities, appropriateness of results, timeliness, and responsiveness to findings. Further, internal audit should evaluate the depth, scope, and quality of the independent review processes and conduct appropriate testing to ensure that the conclusions of these reviews are well founded.

V. Validation Activities

18. Validation is an ongoing process that includes the review and monitoring activities that verify the accuracy of the risk rating and segmentation systems and the quantification process. The components of validation include evaluation of conceptual soundness (including developmental evidence), ongoing monitoring, and outcomes analysis.

A. General Validation Requirements

S 7–7 A bank's validation policy should cover the key aspects of risk rating and segmentation systems and the quantification process.

19. The validation policy should be approved by the bank's senior management, and should:

- Describe the validation process;
- Outline the documentation requirements;
- Assign responsibilities;
- Outline the process for corrective actions; and
- Be updated periodically to incorporate new developments in validation practices and to ensure that validation methods remain appropriate.

S 7–8 Validation must assess the accuracy of the risk rating and segmentation systems and the quantification process.

20. The accuracy of risk rating and segmentation systems and the quantification process is measured by determining whether the:

- Assignment of exposures to risk ratings or segments has been implemented as designed;
- Performance data show that the risk rating or segmentation systems adequately differentiate risk over time;
- Migration of wholesale risk ratings is consistent with the bank's rating philosophy;
- Retail segmentation system separates exposures into stable and homogeneous segments; and
- Actual default, loss severity, and exposure experience of each rating grade or segment is consistent with risk parameter estimates.

21. Some differences between observed outcomes for individual ratings or specific retail segments and the estimated risk parameters are expected. Risk parameter estimates should reflect a degree of conservatism appropriate for the inherent uncertainty in the bank's quantification process. As such, observed outcomes should not consistently or significantly exceed risk parameter estimates. This applies to each of the following:

- Actual long-run average default rates for each rating grade or segment and the assigned PD estimates;
- Actual long-run average economic loss rates on defaulted exposures and the assigned ELGD estimates;
- The economic loss rates on defaulted exposures during actual economic downturn conditions and the assigned LGD estimates; and
- The exposure size of defaulted exposures during actual economic downturn conditions and the assigned EAD estimates.

Bias that results in a reduction of risk-based capital requirements should receive immediate attention from management.

S 7–9 Validation processes for risk rating and segmentation systems, and the quantification process must include the evaluation of conceptual soundness, ongoing monitoring, and outcomes analysis.

22. Validation should be designed to give the greatest possible assurances of the accuracy of the risk rating and segmentation systems and the quantification process. Three activities must be carried out:

- Evaluating conceptual soundness using developmental evidence—determining whether the approach is sound;
- Ongoing monitoring—verifying the process and comparing results to other sources of data or estimates (benchmarking); and
- Outcomes analysis—comparing actual outcomes with estimates by backtesting and other methods.

These integral, ongoing activities must evaluate both internally and externally developed risk rating and segmentation systems, models, and the quantification process.

23. Validation processes, especially outcomes analysis, should recognize that realized outcomes for default, loss severity, and additional drawdowns can vary in a systematic fashion with the economic cycle. Thus, realized outcomes for a given risk parameter can vary around the estimate of long run average. A bank's validation policy should specify how realized outcomes are expected to vary with the economic cycle given the design of the IRB system. For example, given a bank's obligor rating system design, a bank might expect realized defaults to be systematically below the PD estimate during good states of the economic cycle and systematically above the PD

estimate during bad states of the economic cycle. This should be specified in the policy documentation. Realized outcomes for loss severity are not directly comparable with LGD estimates unless an economic downturn is experienced. Nonetheless, outcomes analysis for conditions less severe than an economic downturn can shed light on the validity of the LGD quantification process.

B. Validation Activities

Evaluating Conceptual Soundness using Developmental Evidence

24. Developmental evidence is the primary mechanism used to evaluate the conceptual soundness of the IRB system. The developmental evidence for risk rating and segmentation systems, and the quantification process should include documentation and empirical evidence supporting the methods used and the variables selected in the design and quantification of the IRB system. Where models are used, the evidence should include documentation and a description of the logic that supports the model and an analysis of any statistical model-building techniques.

25. Developmental evidence supporting the risk rating system should include the reasons the system was selected over other systems. Other developmental evidence should at a minimum describe the bank's obligor ratings approach and ratings philosophy, the mapping methodology, and the use and design of facility ratings or loss severity estimates.

26. In supporting the segmentation system, developmental evidence should describe the statistical design of the segmentation system and the selection of risk drivers. Additionally, it should explain why the system was selected over other segmentation approaches.

27. Developmental evidence supporting a bank's quantification process should address each aspect of the quantification process, whether the process explicitly delineates the four stages of quantification or implicitly incorporates the stages.

28. Developmental evidence is more persuasive when it includes empirical evidence. Developmental evidence in support of any model used in the risk rating and segmentation systems or the quantification process should include documentation and a discussion of the logic that supports the model, an analysis of any model-building techniques, sensitivity analysis (analysis of outcome sensitivity with respect to model input changes and model breakdown points), and an assessment of forecast quality. Models should be supported by evidence that they work well across reference data sets. Use of a ''holdout'' sample is a good model-building practice to ensure that a model is robust. It is possible to perform several out-of-sample tests by varying the holdout samples.

29. Empirical developmental evidence for a judgmental rating system will likely be derived differently than such evidence for a model-driven system. One approach to capture empirical developmental evidence for analysis might entail having qualified, independent raters rate credits from prior periods. Ideally, the raters would not be familiar with the circumstances of the disposition of the credits (e.g., default, downgrade, upgrade, paid as agreed, etc.) and would only use information available to the original rater(s) at the time the credits were underwritten and subsequently reviewed. These retrospective ratings could then be compared to the outcomes to determine whether the ratings adequately differentiate risk. Conducting such tests may be difficult if historical data sets do not include a sufficient amount of the information actually used when a rating was assigned. Careful consideration should be given to future data needs and anticipated uses for validation, even if some variables are not used in the current model.

S 7–10 Banks must evaluate the developmental evidence supporting the risk rating and segmentation systems and the quantification process.

30. Evaluating developmental evidence involves assessing how well the risk rating and segmentation systems and the quantification process are designed and constructed. The review of developmental evidence should determine whether:

- Risk rating systems can be expected to accurately assess obligor and facility risk;
- Segmentation systems can be expected to separate exposures into segments with homogenous risk characteristics and to allow for the accurate measurements of risk within segments over time; and
- The quantification process can be expected to accurately estimate PDs, ELGDs, LGDs, and EADs.

31. Developmental evidence should be reviewed whenever the bank makes material changes in its risk rating and segmentation systems or quantification process.

32. Evaluation of developmental evidence includes comparisons of a bank's implemented framework with alternatives considered in the development process and the reason the bank selected the chosen framework. For retail portfolios, data may be available on alternative risk drivers for segmentation, and developmental evidence should include the empirical analysis conducted to choose between risk drivers.

33. The development of risk rating and segmentation systems and the quantification process requires developers to exercise informed judgment. Whether the developmental evidence is sufficient will itself be a matter of expert opinion. Even if a system is model-based, an evaluation of developmental evidence will entail judging the merits of the model-building technique. Expert judgment is essential to the evaluation of the risk rating and segmentation systems and the quantification process development. Experts should be able to draw conclusions about the likelihood of the satisfactory performance of an implemented system.

Ongoing Monitoring: Process Verification and Benchmarking

34. The second component of the validation process for risk rating and segmentation systems and the quantification process is ongoing monitoring. The objective of ongoing monitoring is to confirm that the processes were implemented appropriately and continue to perform as intended. Such analysis involves process verification and benchmarking.

S 7–11 Banks must conduct ongoing process verification of the risk rating and segmentation systems and the quantification process to ensure proper implementation and operation.

35. Process verification encompasses a range of activities that are used to assess whether all internal risk rating and segmentation processes, as well as all quantification processes, are being used, monitored, and updated as designed and intended. It includes determining that data essential to these processes have appropriate integrity, and that all elements of these processes continue to be appropriate to the nature of the bank's exposures. Process verification should also ensure that identified deficiencies are corrected.

36. Verification activities will vary depending on the risk rating and segmentation systems and quantification approaches and their related guidelines. Verification that data are accurate and complete is important for all IRB systems and applies to both internal and external data, including the data provided by a third party.

37. For models-based risk rating and segmentation, verification includes an evaluation of the automated assignment

processes, such as verification of the correct computer coding of the model and data inputs. For expert-judgment and constrained-judgment risk rating systems, verification includes an evaluation of whether the rater adhered to the rating policy and criteria, given the information available to the rater and the documented rationale for the rating decisions.

38. Process verification of risk rating and segmentation systems includes monitoring and analysis of overrides. An override is a generic term that may have different meanings in different contexts. Two types of overrides are discussed below.

• ''Judgmental overrides'' occur when judgments are made to reject the decision of an objective process, such as a model or scorecard, which rates a wholesale obligor, assigns an exposure to loss-severity rating grade, or assigns an exposure to a retail segment; judgmental overrides are an explicit component of such a rating system's design. As a matter of policy in a constrained judgment rating system for wholesale lending, a rater is generally allowed to adjust or override the results of a statistical rating model. For retail lending, the assignment of an exposure to a segment could be overridden, but such overrides generally are rare.

• ''Policy overrides'' refer to exceptions to bank policy with regard to risk rating assignment or segmentation. In the case of pure models-based rating and segmentation systems, an override would be considered to override policy. In a constrained judgment model, a policy override would occur when a rating is assigned by judgmental decision that does not conform to the bank's rating criteria. Overrides outside of policy are expected to be rare.[13]

39. Frequent overrides may call into question aspects of the risk rating or segmentation system. Overrides and adjustments should be monitored and the performance of ratings that have been adjusted or overridden should be tracked for both the validation of rating and segmentation systems and the IRB system as a whole. Banks should have a policy addressing criteria for judgmental overrides and tolerance levels for policy overrides. The frequency of overrides will depend upon the portfolio, the risk rating and segmentation design, and a bank's practices.

[13] Another common use of overrides in retail lending, not included in this context, relates to underwriting decisions. ''Low side'' overrides approve applications that would normally be rejected and ''high side'' overrides reject applications that would normally be approved.

S 7–12 Banks must benchmark their risk rating and segmentation systems, and their risk parameter estimates.

40. Benchmarking is using alternative methods or alternative data to draw inferences about the appropriateness of ratings, segments, risk parameter estimates or model outputs before outcomes are actually known. Benchmarking is a useful validation method that can be applied to all rating, segmentation, and quantification processes.

41. Benchmarking allows a bank to compare the consistency of its risk parameter estimates with those of other estimation techniques and data sources. Benchmarking can be a valuable diagnostic tool for uncovering potential weaknesses in a bank's quantification process. While benchmarking allows for inferences about the accuracy of the risk rating and segmentation systems, and the risk parameter estimates, it does not substitute for backtesting. When differences are observed in the benchmarking exercise, this does not necessarily indicate that the risk rating and segmentation systems, or the risk parameter estimates, are in error. A benchmark is merely an alternative measure, and the difference may be due to different data or methods. Nevertheless, when differences are revealed, proper benchmarking requires the bank to investigate the source of the differences and whether the extent of the difference is appropriate. This investigative process may identify ways in which a bank can improve its risk rating and segmentation systems, and the quantification process.

42. To benchmark risk ratings and segmentation, a bank must at a minimum establish a process in which a representative sample of its internal ratings, portfolio segmentation, and risk parameters are compared to results from another source for the same exposures. Examples of other sources include independent internal raters such as loan review, external corporate rating agencies, or retail credit bureau models, and alternative internally developed credit risk models (''challenger models'').

43. Benchmarking of a risk rating, regardless of the rating approach, customarily asks whether another rater or rating method attaches a comparable rating to a particular obligor or exposure. Benchmarking of a segmentation system customarily asks whether other risk drivers or other segmentation methods provide similar risk separation and assessments of the portfolio risk distribution.

44. Benchmarking of quantification generally involves comparing different choices made in the four stages of quantification. Such benchmarking compares:

• Reference data with data from other data sources;

• Estimates of risk parameters with estimates developed by alternative methods using the same reference data;

• Mappings with alternative mappings that would be expected to provide similar results; and

• Adjustments at the application stage with alternatives.

45. Benchmarking activities can be accomplished in a number of ways and at different levels of aggregation. Some benchmarking activities are conducted more frequently than others; for example, a bank benchmarks a system to evaluate its performance more frequently than it benchmarks the system to determine whether to renovate it completely, an activity that must be considerably more thorough. Examples of benchmarking activities for risk rating and segmentation systems, and the quantification process are listed below:

Risk Ratings or Segmentation Benchmarking

• On an ongoing basis, analyzing the characteristics of obligors or exposures that have been assigned the same wholesale risk rating or retail segment, and comparing the distribution of the portfolio by these ratings or segments between different time periods.

• Periodically re-rating a sample of wholesale credits previously rated under the bank's standard method; examples of benchmark ratings include alternate individual raters in a judgmental system, an alternative internally developed rating model, or third-party credit or debt ratings.

• Periodically comparing the separation power of the IRB retail segmentation to alternative segmentations used in credit risk management and comparing the risk parameter estimates derived from the IRB retail segmentation with an alternative segmentation.

Quantification Benchmarking

• On an ongoing basis, comparing a bank's PD, ELGD, LGD, and EAD estimates with available alternative risk estimates, such as business line loss forecasts or allowance methodologies. Within retail portfolios, vintage analyses (tracking loss rates over the life of the loan, given the same origination time and borrower characteristics) can be compared between different origination periods.

• Periodically comparing a bank's PD, ELGD, LGD, and EAD estimates with

risk parameter estimates derived from alternative choices at some step(s) of the quantification process, such as different reference data sources, different estimation models, etc.

Outcomes Analysis

S 7–13 Banks must analyze outcomes and must develop statistical methods to backtest their risk rating and segmentation systems and the quantification process.

46. The third component of the validation process is outcomes analysis, which is the comparison of risk parameter estimates and model results with actual outcomes. Although banks are expected to employ all the components of the validation process, the data to perform comprehensive outcomes analysis on the existing portfolio may not be available in the early stages of implementation and may be difficult when a bank's process for assessing risks changes significantly. Therefore, banks may at times need to rely more heavily on other validation activities such as developmental evidence, process verification, and benchmarking.[14]

47. Backtesting is the statistical comparison of estimates to realized outcomes. Banks must back-test their risk parameter estimates by regularly comparing actual portfolio or rating grade/segment-level default rates, loss severities, and exposure-at-default experience with the PD, ELGD, LGD, and EAD estimates on which risk-based capital calculations are based. Backtesting indicates the combined effectiveness of the assignment of exposures to wholesale obligor and loss severity ratings or to retail segments and the quantification of the risk parameters attached to those ratings or segments.

S 7–14 Banks should establish ranges around the estimated values of risk parameter estimates and model results in which actual outcomes are expected to fall and have a validation policy that requires them to assess the reasons for differences and that outlines the timing and type of remedial actions taken when results fall outside expected ranges.

48. Banks have considerable flexibility in developing statistical tests to back-test the performance of their risk rating and segmentation systems and the accuracy of their quantification process. Regardless of the backtesting method used, the bank should establish expected ranges for validation results. Backtesting often will not identify the specific reasons for discrepancies between expectations and outcomes. Rather, it will indicate only that further investigation is necessary.

49. When establishing expected ranges, banks should consider relevant elements of a bank's risk rating or segmentation systems that may affect outcomes, for example whether the system is designed to measure risk parameter estimates at a point in time, through the cycle, or at stressed periods. Also, changes in economic or market conditions and portfolio composition between the historical data and data from the present period can lead to differences between outcomes and risk parameter estimates.

50. In establishing expected ranges, a bank should consider which elements of its risk rating or segmentation system, and the quantification process, are most likely to affect outcomes of the risk parameter estimates. However, determining expected ranges can be difficult if a bank has changed its method of quantifying risk parameters and the estimates were calculated by a different method than the outcomes. If so, it may be appropriate to recalculate historical estimates in a manner consistent with the new method. If a bank adjusts final risk parameter estimates to be conservative, it may be appropriate to do its backtesting on the unadjusted estimates.

51. Differences in realized default, loss severity, or exposure rates from expected ranges may point to issues in the reference data, estimation, mapping or application elements of quantification. They may also indicate potential problems in other parts of the risk rating or segmentation system. The bank's validation policy should describe (at least in broad terms) the types of responses that should be considered when actual outcomes fall outside the expected ranges. If the discrepancies demonstrate a systematic tendency to decrease risk-based capital requirements, the nature and source of the bias requires even more detailed scrutiny.

C. Minimum Frequency of Validation

S 7–15 Each of the three activities in the validation process should be conducted often enough to ensure the ongoing integrity, reliability, and accuracy of the IRB risk rating and segmentation systems, and the quantification process.

S 7–16 Developmental evidence must be updated whenever significant changes in methodology, data, or implementation occur. Other validation activities must be ongoing and must not be limited to a point in time.

52. Process verification, benchmarking, and backtesting activities should be conducted often enough to ensure ongoing integrity of the risk rating and segmentation systems, and the quantification process. For example, during high-default periods, banks should analyze realized default and loss severity rates more frequently, perhaps quarterly. They should document the results of validation, report them to appropriate levels of senior risk management, and take action as appropriate.

Chapter 8: Stress Testing of Risk-Based Capital Requirements

Rule Requirements

Part III, Section 22(j)(6): The bank must periodically stress test its advanced systems. The stress testing must include a consideration of how economic cycles, especially downturns, affect risk-based capital requirements (including migration across rating grades and segments and the credit risk mitigation benefits of double default treatment).

1. Under the IRB framework, changes in borrower credit quality will lead to changes in the risk-based capital requirements. Because credit quality typically improves or deteriorates in conjunction with economic conditions, risk-based capital requirements may also vary with the economic cycle. During an economic downturn, risk-based capital requirements typically increase as obligors or exposures migrate toward lower credit quality risk ratings or segments.

2. Stress testing analysis is a means of understanding how economic cycles, especially downturns, as represented by stress scenarios, will affect risk-based capital requirements through migration across risk ratings or segments, effects on double default treatment, and through effects on other relevant aspects of a bank's advanced systems.[15]

S 8–1 Banks must conduct and document stress testing of their advanced systems as part of managing risk-based capital.

[14] For wholesale risk rating systems, banks face the challenge of how to measure the system's performance when backtesting is not conclusive. Because of the rarity of defaults in most years and the bunching of defaults in a few years, the other parts of the validation process will assume greater importance. If risk rating and segmentation processes are developed in a learning environment in which banks attempt to change and improve them, backtesting may be delayed even further. In its early stages, the validation of risk rating and segmentation systems will depend on bank management's exercising informed judgment about the strength of the systems, not simply on empirical tests.

[15] Stress testing is a general term that can be applied to different types of analysis, depending on the purpose of the exercise. Examples of stress testing that have a different purpose than contemplated here include a stress test of bank solvency and a stress test of an individual obligor.

3. Supervisors expect that banks will manage their risk-based capital position so that they remain at least adequately capitalized during all phases of the economic cycle. A bank that is able to accurately estimate risk-based capital levels during a downturn can be more confident of appropriately managing risk-based capital. Stress testing analysis consists of identifying a stress scenario and then translating that scenario into its effect on the levels of key performance measures, including risk-based capital ratios.

4. Banks should use a range of scenarios and methods when stress testing to manage risk-based capital. Scenarios may be historical, hypothetical, or model-based. Key variables specified in a scenario could include, for example, interest rates, transition matrices (ratings and score-band segments), asset values, credit spreads, market liquidity, economic growth rates, inflation rates, exchange rates, or unemployment rates. A single scenario may apply to the entire portfolio, or a number of scenarios may apply to various sub-portfolios. The severity of the stress scenario should be consistent with the periodic economic downturns experienced in the bank's market areas. Such scenarios may be less severe than those used for other purposes, such as testing a bank's solvency.

5. Given a scenario, a bank then estimates the effect of the scenario on risk-weighted assets and its future capital ratios relative to the risk-based capital minimums. Estimating capital ratios includes estimating levels of capital (the numerator of the ratio) as well as measures of risk-weighted assets (the denominator).

6. For example, suppose the scenario for both a retail and a wholesale portfolio is a specific historical recession. For the retail portfolio, score-band transition matrices observed during the recession could be used to quantify migration between segments and thus supply the new distribution of segments expected for the current portfolio, given the scenario. For the wholesale portfolio, internal or rating agency ratings transition matrices observed during the recession could be used to quantify ratings migration, and thus supply the distribution of rating grades. The distribution of segments and rating grades would allow the calculation of risk-weighted assets that would be expected during the recession scenario. Transitions into default would allow banks to estimate the effects of credit losses on income and capital. As part of this analysis, the bank should ensure that the rating philosophy (as revealed by rating migration patterns) of the rating agency, or any other source of ratings, associated with the recession transition matrix is consistent with the bank's rating system, or appropriate adjustments should be made for differences in rating philosophy.

7. The scope of this estimation exercise should be broad and include all material portfolios under the framework for advanced systems. The time horizon of the stress testing analysis should be consistent with the specifics of the scenario and should be long enough to measure the material effects of the scenario on key performance measures. For example, if a scenario such as a historical recession materially affected income and segment or ratings migration over two years, the appropriate time horizon is at least two years.

8. The bank's management of risk-based capital should also take into account the effect of a bank's discretionary actions on risk-based capital levels. For example, a bank's plan to reduce dividends in the face of lowered income would, if implemented, affect retained earnings and the capital accounts. Such discretionary actions should be consistent with the bank's documented risk-based capital management policy. Because discretionary plans may or may not be implemented, a bank should estimate the relevant capital ratios both with and without these actions.

Chapter 9: Counterparty Credit Risk Exposure

Rule Requirements

Part III, Section 22(d): Counterparty credit risk model. A bank must obtain the prior written approval of [AGENCY] under section 32 [of the NPR] to use the internal models methodology for counterparty credit risk.

Part IV, Section 32: Counterparty Credit Risk

I. Overview

1. This chapter supplements the detailed discussion of counterparty credit risk in the NPR by describing some of the elements of counterparty credit risk mitigation, providing information that may aid banks in choosing among the alternative methods to calculate EAD for these transactions, and providing some descriptions and illustrative examples of acceptable modeling practices for estimation of EAD under the alternative methods.

II. Transactions With Counterparty Credit Risk

2. Transactions with counterparty credit risk are those where the credit risk exposure varies with a market variable such as an interest rate or security price. For certain transactions subject to counterparty credit risk where there is financial collateral, a bank may be allowed to recognize the risk mitigating effect of that collateral through an adjustment to EAD.

3. As provided in the NPR, transactions with counterparty credit risk for which a bank may adjust EAD rather than LGD include:

- Repo-style transactions including repurchase and reverse repurchase agreements, and securities lending and securities borrowing transactions;
- Eligible margin loans; and
- Over-the-counter (''OTC'') derivatives transactions.

4. Several methods are available to calculate EAD depending on the type of transaction, presence of eligible collateral, legal agreements surrounding a transaction, the operational capability of a bank, and the modeling capability of a bank:

- A collateral haircut approach that includes standard supervisory haircuts or the bank's own estimates of the haircuts—applied to individual repo-style transactions, eligible margin loans, and single-product groups of such transactions subject to a qualifying master netting agreement (netting set). Additionally, the haircut approach is available to recognize financial collateral in the current exposure methodology for OTC derivatives;
- A simple VaR methodology—applied to single-product netting sets of repo-style transactions and eligible margin loans;
- A current exposure methodology for OTC derivatives; and
- An internal models methodology available for all three transaction types.

5. Supervisor approval is required for all methods except the collateral haircut approach using standard supervisory haircuts and the current exposure methodology for OTC derivatives. To receive approval, a bank should demonstrate to its primary Federal supervisor:

- Internal operational processes used to determine the eligibility of transactions for the method chosen;
- Internal processes used to determine the regulatory and legal ability to net transactions in bankruptcy;
- Appropriate model validation and backtesting procedures;
- Appropriate internal controls for counterparty credit risk;
- Appropriate collateral management processes, which, at a minimum, determine whether collateral meets the definition of financial collateral; and

• Adequacy of the modeling techniques used and how the models meet qualification requirements.

6. If a transaction qualifies for one of the EAD adjustment approaches and the bank elects to use one of the EAD adjustment methods for the transaction, collateral may only be taken into account in the estimation of EAD and may not also affect the other parameters, such as LGD. For eligible transactions, the capital requirement is based on an estimate of the PD of the counterparty and LGD for an unsecured exposure to the counterparty. The EAD is adjusted to reflect a net exposure amount. Credit exposures that do not qualify for the EAD adjustment approach as discussed in this section must follow the IRB approach described elsewhere in this guidance. For those transactions, (i) the LGD for each individual transaction can be adjusted, based on the collateral for the transaction; and (ii) except for the current exposure methodology for OTC derivatives, netting cannot be considered in determining either EAD or PD.

III. Definitions

7. A repo-style transaction is a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the bank acts as agent for a customer and indemnifies the customer against loss, provided that:

• The transaction is based solely on liquid and readily marketable securities or cash;

• The transaction is marked to market daily and subject to daily margin maintenance requirements;

• The transaction is executed under an agreement that provides the bank the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set off collateral promptly upon an event of default (including upon an event of bankruptcy, insolvency, or similar proceeding) of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions; [16] and

• The bank has conducted and documented sufficient legal review to conclude with a well-founded basis that the agreement mentioned above meets these requirements and is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

8. An eligible margin loan is an extension of credit where:

• The credit extension is collateralized exclusively by debt or equity securities that are liquid and readily marketable;

• The collateral is marked to market daily and the transaction is subject to daily margin maintenance requirements;

• The extension of credit is conducted under an agreement that provides the bank the right to accelerate and terminate the extension of credit and to liquidate or set off collateral promptly upon an event of default (including upon an event of bankruptcy, insolvency, or similar proceeding) of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions; and

• The bank has conducted and documented sufficient legal review to conclude with a well-founded basis that the agreement mentioned above meets these requirements and is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

9. An OTC derivative contract is a derivative contract that is not traded on an exchange that requires the daily receipt and payment of cash-variation margin.

• A derivative contract means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivatives, and any other instrument that poses similar counterparty credit risk.

• Derivative contracts also include unsettled securities, commodities, and foreign exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or 5 business days. This would include, for example, agency mortgage-backed securities transactions conducted in the To-Be-Announced market.

10. Financial collateral is the following set of financial instruments in which the bank has a perfected, first priority security interest or the legal equivalent:

• Cash on deposit with the bank (including cash held for the bank by a third-party custodian or trustee);

• Gold bullion;

• Long-term debt securities that have an applicable external rating of one category below investment grade or higher (e.g., at least BB−);

• Short-term debt instruments that have an applicable external rating of at least investment grade (e.g., at least A–3);

• Equity securities that are publicly traded;

• Convertible bonds that are publicly traded; and

• Money market mutual fund shares and other mutual fund shares if a price for the shares is publicly quoted daily.

IV. Netting

S 9–1 All transactions with a counterparty subject to a qualifying master netting agreement constitute a netting set and may be treated as a single exposure, otherwise each transaction shall have its risk-based capital requirement calculated on a standalone basis.

11. Counterparty credit risk may be calculated at the level of a netting set. Consistent with the industry's general practice for computing exposures to counterparty credit risk, a bank can estimate the exposure amount or EAD, and calculate the associated capital requirement on the basis of one or more defined bilateral ''netting sets.'' A ''netting set'' is a group of transactions with a single counterparty that are subject to a legally enforceable bilateral netting agreement that meets the requirements to be a qualifying master netting agreement or qualifying cross product master netting agreement under the terms of the NPR. If a transaction with a counterparty is not subject to a qualifying master netting agreement, it comprises its own netting set and the EAD will need to be calculated for that transaction on its own. The total exposure amount or EAD for a given counterparty is the sum of the exposure amounts or EADs of the individual netting sets with that counterparty.

12. Cross-product netting allows for banks using the internal models methodology to recognize bilateral netting arrangements across repo-style transactions, eligible margin loans, and OTC derivatives. To recognize cross-product netting for risk-based capital purposes:

• Transactions must be conducted under a qualifying master netting agreement;

• A bank must be able to effectively integrate the risk-mitigating effects of cross-product netting into its risk

[16] Where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute ''securities contracts'' or ''repurchase agreements '' under section 555 or 559, respectively, of the Bankruptcy Code (11 U.S.C. 555 or 559), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or netting contracts between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407) or the Federal Reserve Board's Regulation EE (12 CFR Part 231), this requirement is deemed to be met.

management and other information technology systems; and

• The bank must obtain the prior written approval of its primary Federal supervisor.

13. Netting other than on a bilateral basis, such as netting across transactions entered into by affiliates (known as cross-affiliate netting), is not recognized for the purposes of calculating risk-based capital requirements.

V. Determination of Eligibility for EAD Adjustment

S 9–2 Banks should have an appropriately documented process for determining whether transactions are eligible for an EAD adjustment approach if they choose to use an EAD adjustment approach.

14. The process for determining if a transaction is eligible for an EAD adjustment approach should consider whether the transaction meets the definition of a repo-style transaction, eligible margin loan, or OTC derivative. In addition, it must consider the operational requirements for tracking the exposures of such transactions. To determine which EAD adjustment approach to apply, the bank should consider the treatment for similar transactions, the need for regulatory approval, operational and legal requirements, and the scope and complexity of the bank's business in each of the areas. In addition, banks should consider whether transactions otherwise eligible for the EAD adjustment approach are subject to the automatic stay under the U.S. Bankruptcy Code or similar provisions under other applicable bankruptcy law.

VI. Methods for Determining EAD

15. There are three EAD-based methodologies—a collateral haircut approach, a simple VaR methodology, and an internal model methodology—that a bank may use instead of an ELGD/LGD estimation methodology to recognize the benefits of financial collateral in mitigating the counterparty credit risk associated with repo-style transactions and eligible margin loans. For OTC derivative contracts, there are two EAD-based methodologies—the current exposure methodology and an internal models methodology. The current exposure methodology for calculating EAD for an OTC derivative contract or set of OTC derivative contracts subject to a qualifying master netting agreement is similar to the methodology in the general risk-based capital rules.[17] If the OTC derivative is collateralized and the internal models methodology is used, the collateral is recognized within that approach. If the OTC derivative contract is collateralized and the current exposure methodology is used, the bank may use either the ELGD/LGD estimation methodology to recognize the benefits of financial collateral or the collateral haircut approach. Table 1 illustrates which EAD estimation methodologies may be applied to particular types of exposure.

TABLE 1

	Current exposure methodology	Collateral haircut approach	Models approach	
			Simple VaR[18] methodology	Internal models methodology
OTC derivative	Yes	No	No	Yes.
Recognition of collateral for OTC derivatives	No	Yes[19]	No	Yes.
Repo-style transaction	No	Yes	Yes	Yes.
Eligible margin loan	No	Yes	Yes	Yes.
Cross-product netting set	No	No	No	Yes.

S 9–3 Banks must use the same method for determining risk-based capital requirements for all similar transactions.

16. Banks must use the same method for similar transactions, but may use different methods for different transaction types. A bank may use a separate methodology for agency securities lending transactions—that is, repo-style transactions in which the bank, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss—and all other repo-style transactions.

S 9–4 The method for calculating EAD for transactions subject to counterparty credit risk should be appropriate for the risk, extent, and complexity of the bank's activity.

17. Banks that are engaged in prime brokerage, market making, and other sophisticated securities financing and repurchase activities should consider using the VaR model approach or the internal models approach. Banks that do not engage in such activities but are principally using repurchase agreements and other financial contracts for liquidity, cash management, and other risk management purposes may use a collateral haircut approach for eligible margin loans and repo-style transactions, and the current exposure methodology for OTC derivatives.

A. Methodologies for Repo-Style Transactions and Eligible Margin Loans

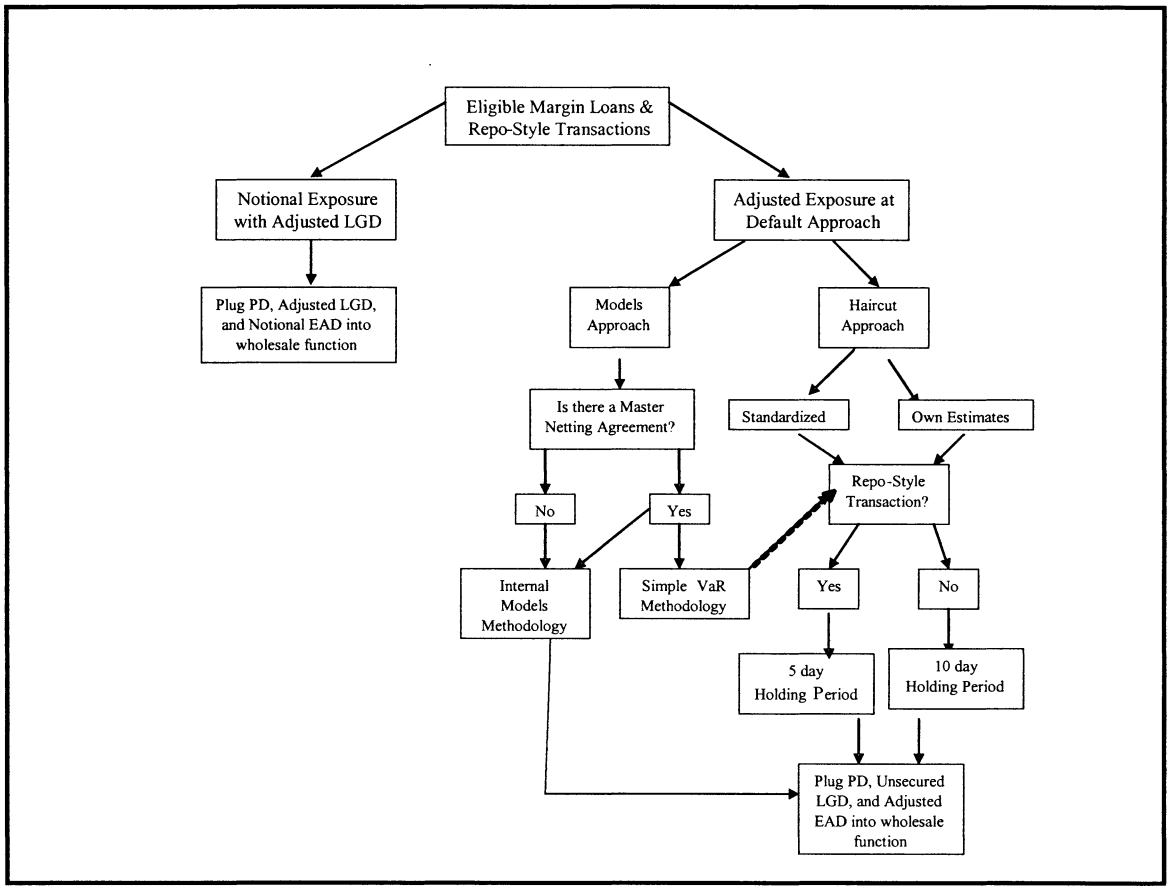
18. Under any of the available methodologies for repo-style transactions and eligible margin loans, a bank can recognize the risk mitigating effect of financial collateral that secures a repo-style transaction, eligible margin loan, or single-product netting set of such transactions subject to a qualifying master netting agreement through an adjustment to EAD rather than ELGD and LGD. The bank may use a collateral haircut approach or one of two models approaches: A simple VaR methodology (for single-product netting sets of repo-style transactions or eligible margin loans) or an internal models methodology (the internal models methodology is described under the methods for OTC derivatives, but may be applied to repo-style transactions and margin loans as well). Figure 1 illustrates the methodologies available for eligible margin loans and repo-style transactions.

[17] The general risk-based capital rules are in 12 CFR part 3, Appendix A (national banks), 12 CFR part 208, Appendix A (state member banks), 12 CFR part 225, Appendix A (bank holding companies), 12 CFR part 325, Appendix A (state non-member banks), and 12 CFR part 567 (savings associations).

[18] Only repo-style transactions and eligible margin loans subject to a single-product qualifying master netting agreement are eligible for the simple VaR methodology.

[19] In conjunction with the current exposure methodology.

Figure 1
EAD for Eligible Margin Loans and Repo-Style Transactions



Collateral Haircut Approach

19. Under the collateral haircut approach, a bank would set EAD equal to the sum of three quantities:

- The value of the exposure less the value of the collateral;
- The sum across all securities of (i) the absolute value of the net position in a given security (where the net position in a given security equals the sum of the current market values of the particular security the bank has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current market values of that same security the bank has borrowed, purchased subject to resale, or taken as collateral from the counterparty); multiplied by (ii) the market price volatility haircut appropriate to that security; and
- The sum across all currencies different from the settlement currency of (i) the absolute value of the net position of both cash and securities in a given currency; multiplied by (ii) the haircut appropriate to that currency mismatch.

To determine the appropriate haircuts, a bank could choose to use standard supervisory haircuts or its own estimates of haircuts.

20. For purposes of the collateral haircut approach, a ''given security'' would include, for example, all securities with a single Committee on Uniform Securities Identification Procedures (''CUSIP'') number and would not include securities with different CUSIP numbers, even if issued by the same issuer with the same maturity date.

Standard Supervisory Haircuts

21. If a bank chooses to use standard supervisory haircuts, it would use an eight percent haircut for each currency mismatch and the haircut appropriate to each security in Table 2 below. The haircuts in the table assume a 10 business-day holding period (appropriate for eligible margin loans). These haircuts must be multiplied by the square root of ½ to convert the standard supervisory haircuts from the 10 business-day holding period to the 5 business-day holding period appropriate for repo-style transactions. A bank would be required to adjust the supervisory haircuts upward to a holding period longer than 10 business days for eligible margin loans or 5 business days for repo-style transactions to take into account collateral illiquidity. To convert the haircut to a holding period longer than 10 business days, the haircut should be multiplied by the square root of the ratio of the actual holding period to the 10 business day minimum holding period. As an example, assume a bank that uses standard supervisory haircuts has extended an eligible margin loan of $100 that is collateralized by 5-year U.S. Treasury notes with a market value of $100. The value of the exposure less the value of the collateral would be zero, and the net position in the security ($100) times the supervisory haircut (.02) would be $2. There is no currency

mismatch. Therefore, the EAD of the exposure would be $0 + $2 = $2.

TABLE 2.—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS [20]

External rating grade category for debt securities	Residual maturity for debt securities[21]	Issuers exempt from the 3 b.p. floor	Other issuers
Two highest investment grade rating categories for long-term ratings/highest investment grade rating category for short-term ratings.	≤1 year	.005	.01
	>1 year, ≤5 years	.02	.04
	>5 years	.04	.08
Two lowest investment grade rating categories for both short- and long-term ratings.	≤1 year	.01	.02
	>1 year, ≤5 years	.03	.06
	>5 years	.06	.12
One rating category below investment grade	All	.15	.25
Main index equities [22] (including convertible bonds) and gold		.15	
Other publicly-traded equities (including convertible bonds)		.25	
Mutual funds		Highest haircut applicable to any security in which the fund can invest	
Cash on deposit with the bank (including a certificate of deposit issued by the bank)		0	

Own Estimates of Haircuts

22. With the prior written approval of the bank's primary Federal supervisor, a bank may calculate security type and currency mismatch haircuts using its own internal estimates of market price volatility and foreign exchange volatility. When a bank calculates its own estimates haircut on a T_N-day holding period, which is different from the minimum holding period for the transaction type, the applicable haircut (H_M) is calculated using the following square root of time formula:

$$H_M = H_N \sqrt{T_M / T_N},$$

where

(i) T_M = 5 for repo-style transactions and 10 for eligible margin loans;
(ii) T_N = holding period used by the bank to derive H_N and
(iii) H_N = haircut based on the holding period T_N.

Requirements for the Use of Internally Estimated Haircuts

23. A bank must meet the following eligibility requirements to use internal estimates of collateral haircuts:

• The bank must use a 99th percentile one-tailed confidence interval, a minimum five-business-day holding period for repo-style transactions, and a minimum 10-business-day holding period for eligible margin loans;

• The bank must adjust holding periods upward where and as appropriate to take into account the illiquidity of an instrument;

• The bank must select a historical observation period for calculating haircuts of at least one year;

• The bank must update its data sets and re-compute haircuts no less frequently than quarterly and must reassess its data sets and haircuts whenever market prices change materially; and

• The bank generally must estimate individually the volatilities of each security and foreign exchange rate separately, and may not take into account the correlations between them.

Simple VaR Methodology

24. With the prior written approval of its primary Federal supervisor, a bank may estimate EAD for repo-style transactions and eligible margin loans subject to a qualifying master netting agreement using a VaR model. Under the simple VaR methodology, a bank's EAD for the transactions subject to such a netting agreement would be equal to the value of the exposures minus the value of the collateral plus a VaR-based estimate of the potential future exposure (''PFE'').

25. The VaR model must estimate the PFE as the bank's empirically-based, best estimate of the 99th percentile, one-tailed confidence interval for an increase in the value of the net collateralized exposure ($\Sigma E - \Sigma C$) over a 5-business-day holding period for repo-style transactions or over a 10-business-day holding period for eligible margin loans using a minimum one-year historical observation period of price data on the instruments that the bank has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. In cases where the underlying collateral is less liquid, a longer time period may be appropriate.

S 9–5 Banks that use the VaR model approach for single product netting sets of repo-style transactions or eligible margin loans must conduct rigorous and regular backtesting to validate its model.

26. The qualifying requirements for the use of such a model are less stringent than the qualification requirements for the internal model methodology described below. In principle, the VaR model generally should meet the quantitative and qualitative criteria for recognition of internal market risk models set out in the Market Risk Amendment (''MRA''). The main ongoing qualification requirement for using the simple VaR model is that the bank must validate its VaR model by establishing and maintaining a rigorous and regular backtesting regime to ensure the validity of the model the bank uses. A backtesting regime that is conducted once every quarter to compare values of one, five, and/or ten day 99 percent VaRs with changes in market values of representative portfolios would be appropriate and generally would be a part of a regular program of backtesting.

[20] The market price volatility haircuts in Table 2 are based on a 10-business-day holding period.

[21] Residual maturity refers to the residual contractual maturity of the debt security. For example, the remaining maturity to call dates or reset dates for floating rate notes should not be used for the residual maturity.

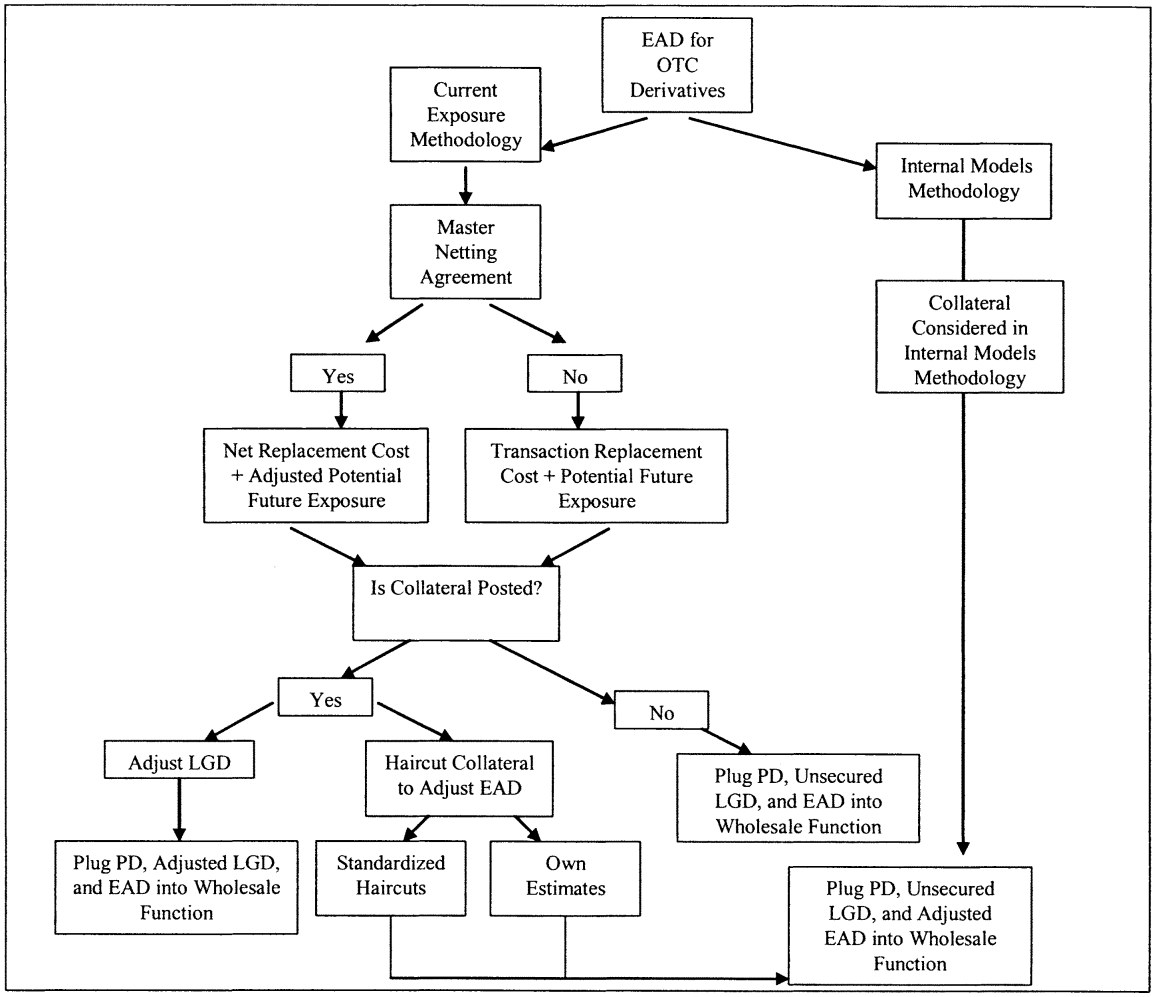
[22] The proposed rule defines a ''main index'' as the S&P 500 Index, the FTSE All-World Index, and any other index approved by the bank's primary Federal supervisor for purposes of the rule.

27. In general, the repo-style backtest should include the backtesting of several representative portfolios that compares the one day 99 percent VaR figure with the change in market value for each portfolio tested. The representative portfolios could be based on actual counterparty portfolios, hypothetical portfolios, or a combination of real and hypothetical portfolios that are designed to test specific aspects of the model, or specific risk factors.

B. EAD for OTC Derivative Contracts

28. A bank may use either the current exposure methodology or the internal models methodology to determine the EAD for OTC derivative contracts. Figure 2 illustrates the possible methodologies for the calculation of EAD for OTC derivatives.

Figure 2
EAD for OTC Derivative Contracts



Current Exposure Methodology

29. The current exposure methodology for determining EAD for OTC derivative contracts is similar to the methodology set forth in the general risk-based capital rules, in that the EAD for an OTC derivative contract would be equal to the sum of the bank's current credit exposure and potential future exposure (''PFE'') on the derivative contract. The proposal's conversion factor (''CF'') matrix used to compute PFE is based on the matrices in the general risk-based capital rules, with two exceptions:

- The CF for credit derivatives that are not used to hedge the credit risk of exposures subject to an IRB risk-based capital requirement is specified to be 5.0 percent for contracts with investment grade reference obligors and 10.0 percent for contracts with non-investment grade obligors. The CFs for credit derivative contracts do not depend on the remaining maturity of the contract; and
- Floating/floating basis swaps are not exempt from the CF for interest rate derivative contracts.

30. A bank may reflect the credit risk mitigating effects of financial collateral by adjusting the ELGD and LGD of the contract or exposure. Alternatively, if the transaction is subject to daily marking-to-market and re-margining, the bank may adjust the EAD of the contract using the collateral haircut approach for repo-style transactions and eligible margin loans. A bank applying the collateral haircut approach to OTC derivatives must use a 10-business-day minimum holding period.

C. Internal Models Methodology

31. The internal models methodology for the calculation of EAD can be applied to repo-style transactions, eligible margin loans, and OTC derivatives. The internal models methodology requires a risk model that captures counterparty credit risk and estimates EAD at the level of a ''netting set,'' that is, transactions with a single counterparty that are subject to a qualifying master netting agreement. A transaction not subject to a qualifying master netting agreement is considered to be its own netting set and EAD must be calculated for each such transaction individually. A bank may use the internal model methodology for OTC derivatives (collateralized or uncollateralized) and single-product netting sets thereof, for eligible margin loans and single-product netting sets thereof, or for repo-style transactions and single-product netting sets thereof. A bank may choose to use the internal models methodology for one or two of these three types of exposures and not the other types. As described in paragraph 12 of this chapter, in cases where a bank has been approved by its primary Federal supervisor to incorporate the effects of cross-product netting agreements in their internal models methodology, the bank may use the internal models methodology for combinations of repo-style transactions, eligible margin loans, and OTC derivatives conducted under a qualifying cross-product netting agreement.

32. Banks use several measures to manage their exposure to counterparty credit risk, including peak exposure (''PE''), expected exposure (''EE''), and expected positive exposure (''EPE''). PE is the maximum exposure estimated to occur on a future date at a high level of statistical confidence. Banks often use PE when measuring counterparty credit risk exposure against counterparty credit limits. EE is the probability-weighted average exposure to a counterparty estimated to exist at any specified future date, whereas EPE is the time-weighted average of individual expected exposures to a counterparty where the weights are the proportion of the time interval that an individual exposure represents.

33. Effective EPE, described below, is to be used in the calculation of EAD under the internal models methodology. EAD is calculated as a multiple of effective EPE.

34. EE and EPE may not capture additional risk arising from the replacement of existing short-term positions over the one year horizon used for risk-based capital requirements (that is, rollover risk) or may underestimate the exposures of eligible margin loans, repo-style transactions, and OTC derivatives with short maturities. For this reason, a netting set's ''effective EPE'' will be used as the basis for calculating EAD for counterparty credit risk. Effective EPE is the time-weighted average of effective EE over one year where the weights are the proportion that an individual effective EE represents in a one-year time interval. If all contracts in a netting set mature before one year, effective EPE is the average of effective EE until all contracts in the netting set mature. Effective EE is defined as:

Effective EE_{tk} = max (Effective EE_{tk-1}, EE_{tk})

where exposure is measured at future dates t1, t2, t3, * * * and effective EE_{t0} equals current exposure. Under the internal models methodology, a measure that is more conservative than effective EPE for every counterparty (for example, a measure based on peak exposure) can be used in place of effective EPE with prior approval of the primary Federal supervisor.

35. The internal model methodology scales effective EPE using a multiplier, termed ''alpha.'' Alpha is set at 1.4; a bank's primary Federal supervisor has the flexibility to raise this value in appropriate situations. With approval of the primary Federal supervisor, a bank may use its own estimate of alpha as described below, subject to a floor of 1.2.

36. The maturity adjustment for transactions under the internal models methodology is described in the NPR. This maturity formula for M is based on the effective credit duration of the counterparty exposure. A bank that uses an internal model to calculate a one-sided credit valuation adjustment can use the effective credit duration estimated by such a model for maturity, M, if the bank can demonstrate to its primary Federal supervisor that the effective credit duration used by the bank gives the same value for M as the maturity formula for Counterparty Credit Risk (''CCR'') described in the NPR.

A Description of the Modeling Process for Effective Expected Positive Exposure

37. The basis of the calculation is to forecast, based on observed price movements, the range of possible values that a portfolio of transactions with a counterparty that constitute a netting set can take in the future and assign probabilities to those possible values. This is the statistical probability distribution of the market values for the portfolio. There are many possible methods for making this forecast ranging from Monte Carlo simulation to using an analytic formula.

38. The process generally starts with a calculation of the current market value of the transactions with a counterparty that are in a netting set. Cases where the current market value of the netting set is positive represent an exposure to the counterparty (the counterparty owes the bank money). Cases where the current market value is negative do not represent exposures to the counterparty since the bank owes the counterparty money. To determine the current exposure, the market value of collateral posted by the counterparty is subtracted from the current market value of the netting set. If this difference is negative the current exposure is zero.

39. The distribution of exposures on a future date can also include the exposure reducing effect of financial collateral. In cases where financial collateral is held, the distribution of market values of the positions and the collateral held against the netting set is calculated together and cases of negative combined market values of transactions and collateral are set to zero since they do not represent a credit exposure if the counterparty were to default (the counterparty has posted more collateral than it owes the bank, or the bank owes the counterparty).

40. The bank will have to determine for which future dates to calculate probability distributions of the market value of transactions in the netting set. These should be chosen to accurately reflect the cashflows of transactions in a netting set.

41. For these future dates (e.g., 1, 3, 5, and 10 days in the future and every month out to one year[23]) the bank will calculate the distribution of market values for the netting set.

42. Expected exposure (''EE'') is defined as the expected value of the probability distribution of credit risk exposures to a counterparty at any specified future date before the maturity date of the longest term transaction in the netting set. Banks will need to convert from market values of transactions to credit risk exposures to make this calculation. When the transactions in a netting set have a

[23] These example dates are given to clarify the meaning of future dates, they do not represent a requirement. As described in paragraph 47 of this chapter, as well as in the NPR, a large number of future dates may be computationally burdensome, and the number of future dates will depend explicitly on a trade off between the ability to calculate effective EPE in an expeditious manner and the accuracy of the computation.

positive value, the counterparty owes money to the bank and there is a credit risk exposure equal to the positive market value of the transactions. When the transactions have a negative market value, the bank owes the counterparty money and there is no credit risk exposure. Generally, banks will start by calculating the probability distribution of the market value of the transactions in a netting set with a counterparty on a future date. To convert from a probability distribution of market values to a probability distribution of credit risk exposures, cases where the market value is negative should correspond to a credit risk exposure of zero, and cases where the market value is positive should correspond to a credit risk exposure equal to the market value of the transactions. This means that expected exposure includes in the probability weighted average a value of zero for all cases where the market value, including the effect of collateral, is negative.

43. Effective expected exposure on a future date is the greater of expected exposure on that date or effective expected exposure on the previous future date. Effective expected exposure is calculated recursively, and the value for the first future date should be the greater of the expected exposure calculated on that date or the current exposure. This means that effective expected exposure is not allowed to decline as one moves to future dates that are further in the future, and that effective expected exposure will always be greater than or equal to current exposure.

44. Effective expected positive exposure then takes the time-weighted average of effective expected exposures. For example, if effective expected exposure is calculated each month for the first six months as 5, 6, 6, 6, 7 and 7 in order, and each quarter for the second half of the year as 7 and 7, respectively, then those first six monthly values would each get a weight of 1/12 and the quarterly observations in the second half of the year would each get a weight of 1/4 in the average. Effective expected positive exposure using these values at these dates would be 6.583.

45. If the longest maturity contract in the netting set was less than a year then the effective expected positive exposure only includes the effective expected exposures out to the longest maturity and the time-weighted average only goes out to the longest maturity. For example, if the longest maturity contract in the netting set is 5 months and the effective expected exposures are calculated for each month for those five months as (3, 3, 4, 4, 6), each monthly calculation would get a weight of 1/5 and the effective expected positive exposure would be 4. The zero exposure values for months six through twelve would not be included in the average nor would the average be computed over a full year.

Requirements for the Internal Models Methodology

S 9–6 Banks must meet certain qualifying criteria that consist of operational requirements, modeling standards, and model validation requirements before receiving their primary Federal supervisor's approval to use the internal models method.

46. Banks must have the systems capability to estimate EE on a daily basis. While this does not require the bank to report EE daily, or even to estimate EE daily, the bank must be able to demonstrate that it is capable of performing the estimation daily.

47. Banks must estimate EE at enough future time points to accurately reflect all future cash flows of contracts in the netting set. In order to accurately reflect the exposure arising from a transaction, the model should incorporate those contractual provisions, such as reset dates, that can materially affect the timing, probability, or amount of any payment. The requirement reflects the need for an accurate estimate of effective EPE. However, in order to balance the ability to calculate exposures with the need for information on a timely basis, the number of time points is not specified. Supervisors will assess the tradeoff between the computation requirements of more future time points against the need for the ability to perform timely assessments of counterparty credit risk in determining the number of time points that banks should use in establishing a counterparty's EE profile. EE should be calculated for enough future dates to accurately reflect the timing of cash flows. This accuracy should be subject to the bank's internal review process.

48. Banks must have been using an internal model that broadly meets the minimum standards to calculate the distributions of exposures upon which the EAD calculation is based for a period of at least one year prior to approval. This requirement is to ensure that the bank has integrated the modeling into its counterparty credit risk management process.

49. Bank models must account for the non-normality of exposure distribution where appropriate. Non-normality of exposures means that high loss events occur more frequently than would be expected on the basis of a normal distribution, the statistical term for which is leptokurtosis. In many instances, there may not be a need to account for this. The characteristics of leptokurtosis will have a greater proportional effect on the measures of peak exposure (or some high threshold percentile measure) than on the measure of expected exposure used here. However, the bank should adjust its EAD measure appropriately when the underlying distribution of the market risk factors displays a significant degree of leptokurtosis.

50. Banks must measure, monitor, and control both current exposure to counterparties and counterparty credit risk over the whole life of the contracts in a netting set with a counterparty. The bank should exercise active management of both existing exposure and exposure that could change in the future due to market moves.

51. Banks must measure and manage current exposures gross and net of collateral held, where appropriate. The bank must estimate expected exposure for OTC derivatives contracts both with and without the effects of collateral agreements.

52. Banks must have procedures to identify, monitor, and control specific wrong way risk throughout the life of an exposure. Wrong way risk in this context is the risk that future exposure to a counterparty will be high when the counterparty's probability of default is also high.

53. The data used by banks should be adequate for the measurement and modeling of the exposures. In particular, current exposures must be calculated on the basis of current and accurate market data. When historical data are used to estimate model parameters, at least three years of data that cover a wide range of economic conditions must be used. This requirement reflects the longer horizon for counterparty credit risk exposures compared to market risk exposures. The data should be updated at least quarterly or more frequently when conditions warrant. Banks are also encouraged to incorporate model parameters based on forward-looking measures.

S 9–7 Banks that use the internal models methodology for counterparty credit risk transactions must establish initial model validation and ongoing model review procedures. The model review should consider whether the inputs and risk factors as well as the model outputs are appropriate. The review of outputs should include a backtesting regime that compares the model's output with realized exposures.

54. Because counterparty exposures are driven by movements in market variables, the validation of an EPE model is similar to the validation of a VaR model that is used to measure market risk. A validation of either type of model compares forecasted changes in value to realized changes. However, the EPE simulation model forms an average of credit exposures over a 1-year time horizon, whereas a market risk VaR typically forms an estimate of value changes. These differences make backtesting internal models used to measure counterparty credit risk more difficult to conduct and reliably interpret than backtesting VaR models used to measure market risk.

55. The pricing models used to calculate counterparty credit risk exposure for a given scenario of future shocks to market risk factors should be tested as part of the model validation process. These pricing models may be different from those used to calculate VaR over a short horizon. Pricing models should account for the nonlinearity of option value with respect to market risk factors where appropriate.

56. Historical backtesting on representative counterparty portfolios should be part of the model validation process. The representative portfolio should be held fixed over the backtesting interval. A bank should conduct such backtesting on a number of representative counterparty portfolios (actual or hypothetical) looking back an appropriate time period. These representative portfolios should be chosen based on their sensitivity to the material risk factors and correlations to which the firm is exposed. It would appropriate to conduct such backtests once each quarter.

57. Starting at a particular historical date, the backtest would use the internal model to forecast each portfolio's probability distribution of exposure at various time horizons. Using historical data on movements in market risk factors, the backtest then computes the actual exposures that would have occurred on each portfolio at each time horizon assuming no change in the portfolio's composition. These realized exposures would then be compared with the model's forecast distribution at various time horizons. The above should be repeated for several historical dates covering a wide range of market conditions (e.g., rising rates, falling rates, quiet markets, volatile markets). Significant differences between the realized exposures and the model's forecast distribution could indicate a problem with the model or the underlying data.

Modeling Requirements for the Internal Models Method

Time Horizon

58. The time horizon over which the time-weighted average of effective expected exposures is taken for the calculation of effective expected positive exposure is one year or the longest maturity of any transaction in a netting set, whichever is shorter. Examples are provided in paragraphs 44 and 45. Banks which receive approval to incorporate the effect of collateral agreements using the shortcut method described below may also use a shorter time horizon than one year.

Recognition of Collateral

59. With the prior written approval of its primary Federal supervisor, a bank may fully incorporate into its internal model the effect of a collateral agreement that requires receipt of collateral when exposure to the counterparty increases. Banks may not capture the effects of agreements that require receipt of collateral when counterparty credit quality deteriorates. A bank may use a shortcut method where the effective EPE is equal to the lesser of:

- The threshold, defined as the exposure amount at which the counterparty is required to post collateral under the collateral agreement, if the threshold is positive, plus an add-on that reflects the potential increase in exposure over the margin period of risk. The add-on is computed as the expected increase in the netting set's exposure beginning from current exposure of zero over the margin period of risk. The margin period of risk is defined in the NPR. The minimum margin period of risk is 5 business days for repo-style transactions and 10 business days for other transactions when liquid collateral is posted under a daily margin maintenance requirement. This period should be extended to cover any additional time between margin calls, any potential close out difficulties, and the time to sell out collateral, particularly if it is illiquid; or
- Effective EPE without a collateral agreement.

Risk Management and Modeling

60. The modeling approval requirements reflect the need for accurate and timely estimates of EAD, secure contractual rights for collateral and netting, sound management of counterparty credit risk using appropriate risk measures, consideration of risks that are outside of models when managing risk, and an operational system that facilitates the management of counterparty credit risk using the appropriate models and tools.

61. The use of effective EPE for determining risk-based capital requirements does not necessitate the use of effective EPE for setting counterparty exposure limits. Peak exposure may be, and often is, a more appropriate measure to limit counterparty exposures. However, the probability distributions of future exposures that are used for the effective EPE calculation should be the same as those used for risk management and limit setting. This underlying distribution of future exposures should be used for one year at the bank prior to the bank being approved to use internal models for its risk-based capital calculation, but not necessarily to calculate EPE or Effective EPE.

62. Banks should estimate the probability distribution of future exposures out to the longest remaining maturity of any contract with a counterparty, even though Effective EPE for risk-based capital purposes is calculated over one year. The exposures beyond one year must be monitored and controlled by the bank.

63. The bank should exercise active management of both existing exposure and exposure that could change in the future due to market moves. The bank should measure, monitor, and control the exposure to a counterparty over the whole life of all contracts in the netting set, in addition to accurately measuring and actively monitoring the current exposure to counterparties.

Alternative Models for Counterparty Credit Risk

64. Banks that opt to use the internal models method can choose to model EAD for some transactions using a model different than an alpha (of 1.4 or higher) times effective EPE. The bank must receive approval of its primary Federal supervisor in such cases, and must demonstrate to its supervisor that the alternative model is more conservative than effective EPE multiplied by an alpha of 1.4 for each counterparty. This demonstration is necessary to receive initial approval, and should be demonstrated to the primary Federal supervisor whenever circumstances change. For example, banks may already have a peak exposure model for some transactions that is more conservative than effective EPE multiplied by 1.4. Rather than develop an Effective EPE model, the bank may choose to continue to use the peak exposure model for these transactions for a period of time, while adopting an effective EPE model for other transactions. The bank would have to

demonstrate that it meets the qualification requirements to use an internal model for the peak exposure model and that the model results in a conservative EAD.

65. Cases where a bank might opt to use a more conservative model than alpha times effective EPE include transactions for which the bank has legacy models, new business lines, and structured transactions that are not expected to comprise an ongoing business and the conservative model is less computationally intensive.

66. Alternative models for counterparty credit risk should be applied to all similar transactions.

Own Estimates of Alpha

67. The value of alpha for a bank using internal models of EPE is 1.4 unless (i) the primary Federal supervisor raises the value of alpha in appropriate circumstances based on the bank's specific characteristics of counterparty credit risk or (ii) the bank meets the requirements outlined in the NPR and has supervisory approval to use its own estimate of alpha. A bank with sufficiently sophisticated models that can perform the necessary credit and market risk simulations and that has supervisory approval to do its own estimate of alpha may use the greater of that estimated alpha or 1.2.

68. For banks that receive supervisory approval to model alpha,

$$\alpha = \max\left(1.2, {UL_{CCR}}/{UL_{BII}}\right)$$

Where:

UL_{CCR} = the bank's own internal estimate of the 99.9 percentile unexpected losses from CCR over a one-year time horizon, and

UL_{BII} = the measure of unexpected losses from CCR using the Basel II risk-based capital requirement, but with the EAD component of that requirement calculated using an alpha set equal to 1.0.

69. The estimate of alpha is calculated as the ratio of the bank's internal measure of unexpected losses due to counterparty credit risk at a one-year 99.9 percent confidence level (numerator) to the estimate of losses using the internal model method in the NPR, but with alpha set equal to one (denominator). This ratio must be run at least quarterly, and evidence of the stability of this estimate over a quarter should be presented to the bank's primary Federal supervisor.

70. The numerator is determined considering the PD, EAD, and LGD together to determine unexpected losses. A simulation, or other model, which considers the variation of PD and EAD together should be used to determine the distribution of counterparty credit losses. The estimate of unexpected losses at a one-year 99.9 percent confidence level should capture the correlation of a counterparty's PD with exposure, the effect of concentrated exposures, the proportion of a counterparty exposure that is accounted for by a market risk factor, and the correlation of exposures across counterparties.

71. The bank should provide a description of the sources of model risk for the calculation of the numerator. The primary Federal supervisor will review the models to determine if the internally estimated alpha is acceptable, if any adjustment to the internally estimated alpha is necessary, or if the models used to estimate alpha need to be adjusted.

72. If a bank uses a conservative internal model to determine EAD for some transactions, the primary Federal supervisor may require the bank to remove these transactions from both the numerator and denominator for the purposes of estimating alpha.

Counterparty Credit Risk Mitigation Using Credit Derivatives

73. Under the internal models method, the reference instrument underlying a credit derivative that pays the bank on the default of a counterparty may be entered as a short exposure into a netting set of the counterparty that credit protection is purchased on. The reference instrument underlying the credit derivative should also be entered as a long exposure into the netting set of the seller of the credit protection. The purchase of a credit derivative on a counterparty exposure transfers the risk of the instrument referenced in the credit derivative contract from the counterparty to the seller of the credit derivative.

74. Banks may apply the PD substitution approach, the LGD adjustment approach, or (if applicable) the double default treatment to a CCR exposure hedged by an eligible guarantee or eligible credit derivative.

VII. Defaulted Counterparties

75. Operational or settlement errors do not necessarily trigger a default event for PD assignment purposes. However, if a credit-related charge-off occurs as the result of a counterparty's failure to perform on a financial contract, this would constitute a default event for risk-based capital purposes and the PDs for all exposures to that obligor should be adjusted to the value of one.

Chapter 10: Risk-Weighted Assets for Equity Exposures

Rule Requirements

Part III, section 22(g): Equity exposures model. A bank must obtain the prior written approval of [AGENCY] under section 53 [of the NPR] to use the internal models approach for equity exposures.

Part VI: Risk-Weighted Assets for Equity Exposures

I. Overview

1. This chapter supplements the detailed discussion of equity exposures in the NPR. It describes supervisory guidance for determining risk-based capital requirements for equity exposures held in the banking book for banks subject to the Market Risk Rule and for all equity exposures for banks not subject to the Market Risk Rule.

II. Definition of Banking Book Equities

2. Equity exposure means:

- A security or instrument (whether voting or non-voting) that represents a direct or indirect ownership interest in, and a residual claim on, the assets and income of a company, unless:

—The issuing company is consolidated with the bank under Generally Accepted Accounting Principles (''GAAP'');

—The bank is required to deduct the ownership interest from Tier 1 or Tier 2 capital under the NPR;

—The ownership interest is redeemable;

—The ownership interest incorporates a payment or other similar obligation on the part of the issuing company (such as an obligation to pay periodic interest); or

—The ownership interest is a securitization exposure.

- A security or instrument that is mandatorily convertible into a security or instrument described in the first bullet of this definition;
- An option or warrant that is exercisable for a security or instrument described in the first bullet of this definition; or
- Any other security or instrument (other than a securitization exposure) to the extent the return on the security or instrument is based on the performance of a security or instrument described in the first bullet of this definition.

III. Applying the Framework

3. Under the proposed framework for equity exposures in the NPR, a bank would have the option to use either a simple risk-weight approach (''SRWA'') or an internal models approach (''IMA'') for equity exposures that are not

exposures to an investment fund. A bank would use a look-through approach for equity exposures to an investment fund. Under the SRWA, a bank would generally assign a 300 percent risk weight to publicly-traded equity exposures and a 400 percent risk weight to non-publicly-traded equity exposures. Certain equity exposures to sovereigns, multilateral institutions, and public sector enterprises would have a risk weight of 0 percent, 20 percent, or 100 percent. Also, community development equity exposures, as well as hedged equity exposures that meet specified conditions are risk weighted at 100 percent. Non-significant equity exposures (*i.e.*, exposures that aggregate to an amount that is less than or equal to 10 percent of the bank's Tier 1 plus Tier 2 capital) are also risk weighted at 100 percent.

4. The ''adjusted carrying value'' of an equity exposure is:

• For the on-balance sheet component of an equity exposure, the bank's carrying value of the exposure reduced by any unrealized gains on the exposure that are reflected in such carrying value but excluded from the bank's Tier 1 and Tier 2 capital; and

• For the off-balance sheet component of an equity exposure, the effective notional principal amount of the exposure, the size of which is equivalent to a hypothetical on-balance sheet position in the underlying equity instrument that would evidence the same change in fair value (measured in dollars) for a given small change in the price of the underlying equity instrument, minus the adjusted carrying value of the on-balance sheet component of the exposure as calculated in the previous bullet.

5. Publicly-traded equity exposures can be hedged to reduce their risk-based capital requirement. However, private equities cannot be hedged to reduce their risk-based capital requirement.

S 10–1 Banks must apply the same methodology to like instruments.

6. A bank may apply (i) the SRWA to private equity exposures and the IMA to public equities, or (ii) the IMA to all equity exposures, or (iii) the SRWA to all equity exposures. As described further in the NPR, the IMA provides for the application of SRWA risk weights for those equity exposures that would qualify for a risk weight between zero and 100 percent.

7. Equity exposures in investment funds must use one of three look-through approaches (where the fund holdings are treated as if proportionally held directly by the bank) to determine risk-based capital requirements under this framework. The three approaches are:

• The full look-through approach;

• The simple modified look-through approach; or

• The alternative modified look-through approach.

8. There is a risk-weighted asset floor of 7 percent of the adjusted carrying value of a bank's exposure to an investment fund. A zero percent risk weight can still be applied to a particular exposure class within an investment fund; the 7 percent floor applies to an investment fund, not its constituents.

9. A bank may use the full look-through approach only if the bank is able to compute a risk-weighted asset amount for each of the exposures held by the investment fund (calculated under the proposed rule as if the exposures were held directly by the bank). Under this approach, a bank would set the risk-weighted asset amount of the bank's equity exposure to the investment fund equal to the greater of:

(i) The product of

(A) the aggregate risk-weighted asset amounts of the exposures held by the fund as if they were held directly by the bank and

(B) the bank's proportional ownership share of the fund; and

(ii) 7 percent of the adjusted carrying value of the bank's equity exposure to the investment fund.

10. Under the simple modified look-through approach, a bank may set the risk-weighted asset amount for its equity exposure to an investment fund equal to the adjusted carrying value of the equity exposure multiplied by the highest risk weight in Table L of the NPR that applies to any exposure the fund is permitted to hold under its prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. The bank may exclude derivative contracts that are used for hedging, not speculative purposes, and do not constitute a material portion of the fund's exposures. A bank may not assign an equity exposure to an investment fund to an aggregate risk weight of less than 7 percent under this approach.

11. Under the alternative modified look-through approach, a bank may assign the adjusted carrying value of an equity exposure to an investment fund on a pro rata basis to different risk-weight categories in Table L of the NPR according to the investment limits in the fund's prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. If the sum of the investment limits for all exposure classes within the fund exceeds 100 percent, the bank must assume that the fund invests to the maximum extent permitted under its investment limits in the exposure class with the highest risk weight under Table L, and continues to make investments in the order of the exposure class with the next highest risk-weight under Table L until the maximum total investment level is reached. If more than one exposure class applies to an exposure, the bank must use the highest applicable risk weight. A bank may exclude derivative contracts held by the fund that are used for hedging, not speculative, purposes and do not constitute a material portion of the fund's exposures. The overall risk weight assigned to an equity exposure to an investment fund under this approach may not be less than 7 percent.

IV. Using Internal Models for Equity Exposures

S 10–2 If a bank chooses to use an internal model, it must produce reliable estimates of the potential loss in the bank's portfolio from equity holdings under stress market conditions.

12. To qualify to use the IMA to calculate risk-based capital requirements for equity exposures, a bank must receive prior written approval from its primary Federal supervisor. To receive such approval, the bank must demonstrate to its primary Federal supervisor's satisfaction that the bank meets the following criteria:

• The bank must have a model that:

—Assesses the potential decline in value of its modeled equity exposures;

—Is commensurate with the size, complexity, and composition of the bank's modeled equity exposures; and

—Adequately captures both general market risk and idiosyncratic risk.

• The bank's model must produce an estimate of potential losses for its modeled equity exposures that is no less than the estimate of potential losses produced by a VaR methodology employing a 99.0 percent, one-tailed confidence interval of the distribution of quarterly returns for a benchmark portfolio of equity exposures comparable to the bank's modeled equity exposures using a long-term sample period.

• The number of risk factors and exposures in the sample and the data period used for quantification in the bank's model and benchmarking exercise must be sufficient to provide confidence in the accuracy and robustness of the bank's estimates.

• The bank's model and benchmarking process must incorporate

data that are relevant in representing the risk profile of the bank's modeled equity exposures, and must include data from at least one equity market cycle containing adverse market movements relevant to the risk profile of the bank's modeled equity exposures. If the bank's model uses a scenario methodology, the bank must demonstrate that the model produces a conservative estimate of potential losses on the bank's modeled equity exposures over a relevant long-term market cycle. If the bank employs risk factor models, the bank must demonstrate through empirical analysis the appropriateness of the risk factors used.

- Daily market prices must be available for all modeled equity exposures, either direct holdings or proxies.
- The bank must be able to demonstrate, using theoretical arguments and empirical evidence, that any proxies used in the modeling process are comparable to the bank's modeled equity exposures and that the bank has made appropriate adjustments for differences. The bank must derive any proxies for its modeled equity exposures and benchmark portfolio using historical market data that are relevant to the bank's modeled equity exposures and benchmark portfolio (or, where not, must use appropriately adjusted data), and such proxies must be robust estimates of the risk of the bank's modeled equity exposures.

13. No one particular type of model is preferred or required. Appropriate internal models may include either traditional VaR models (e.g., historical simulation, variance/covariance, or Monte Carlo simulation) or scenario analysis ''stress tests.'' These models are subject to the validation framework outlined in Chapter 7 of this guidance.

14. The use of either single or multi-factor models is permitted, provided that the factors are sufficient to capture all material risks of a bank's equity holdings. Risk factors should correspond to the appropriate equity market characteristics (e.g., public, private, large cap, small cap, industry sectors) in which the bank holds significant positions.

V. Quantification of Equity Exposures

A. Reference Data

15. The data used to represent return distributions or depict stress scenarios should reflect as long a sample period for which data are available and meaningful in representing the risk profile of equity holdings. In the case of VaR models, the data used should be sufficient to provide statistically reliable and robust loss estimates and should include at least one equity market cycle containing adverse market movements relevant to the risk profile of the bank's specific holdings. In the case where the internal model uses a scenario or stress test methodology, the bank should demonstrate that the shock employed provides a conservative estimate of potential losses over a relevant long-term market or business cycle.

16. In constructing VaR models estimating potential quarterly losses, banks should use quarterly data to the extent practicable. Where estimates based on shorter time periods are converted to a quarterly equivalent, the conversion should be made through the use of an analytically appropriate method supported by empirical evidence, and should be applied through a well-developed and well-documented thought process and analysis. In general, time horizon conversions should be applied conservatively and consistently over time. Furthermore, where only limited data are available or where technical limitations are such that estimates from any single method will be of uncertain quality, banks should add appropriate margins of conservatism.

B. External Data

17. It is recognized that there are significant challenges associated with deriving market-based measures of risk for both privately-held and publicly-traded equities where objectively-determined market prices may not be readily available. Accordingly, banks with significant equity holdings with these characteristics may need to use external data in modeling the risks associated with these holdings.

18. Banks should be able to demonstrate that the external data adequately capture the risks of the underlying equity portfolio. Documentation should identify the relevant factors (*e.g.*, business lines, balance sheet characteristics, geographic location, company age, industry sector and subsector, operating characteristics) used in mapping the external data to the bank's individual equity exposures.

C. Estimation

19. Banks will have discretion to recognize and estimate empirical correlations, provided that the bank's system for measuring correlations is sound and empirically supported. When calculating correlations, consideration should be given to data consistency, relevant time period, and the volatility of correlations under stressed market conditions. The appropriateness of correlation assumptions and estimation techniques should be discussed in model documentation.

20. Survivorship bias is a particularly important issue in cases where banks choose to use databases of actual returns of equity exposures. Internal data on private equity exposure returns may reflect only those private equity exposures that have experienced positive returns and were exited successfully (*i.e.*, where a true market price has been revealed). In short, the returns on investments that have achieved success measure only the winners—as opposed to the entire population of relevant private equities (including those that failed). This imparts an upward bias on the ex-ante returns expected by banks. Accordingly, banks that choose to use actual return statistics for individual private equity exposures or private equity funds, whether provided by external vendors or internally generated databases, should fully understand how these statistics are computed and, where necessary, should make adjustments to account for any selection biases that may be present.

VI. Validation of Internal Models for Equity Exposures

S 10–3 Banks must validate internal models used for equity exposures.

21. The developmental evidence provided for a VaR model should include a discussion of the results from a rigorous and comprehensive stress testing of the model and estimation procedure. This stress test should be applied to volatility computations and make use of either hypothetical or historical scenarios that reflect worst-case losses given underlying positions. Stress tests should provide information about the effect of tail events beyond the level of confidence assumed in the internal models approach.

22. For purposes of evaluating the capital requirements produced by a bank's internal model methodology, banks should demonstrate that non-VaR based internal models for equity exposures (e.g., a stress scenario analysis) provide risk estimates and capital requirements that are at least as conservative as those produced by a 99 percent VaR over one quarter for a benchmark portfolio. The benchmark portfolio should have sufficient data to calculate a one quarter 99 percent VaR. To demonstrate this, the bank should run their internal model on the benchmark portfolio and show that the internal model produces a capital amount for the benchmark portfolio that is at least as great as the one quarter 99 percent VaR for the benchmark portfolio. Banks that choose a scenario

analysis ''stress-test''-type model or some other form of non-VaR-based model do not have to run a VaR model in parallel, but banks should be able to compare their internal model to the VaR for the benchmark portfolio.

23. For VaR models, model validation through backtesting must be conducted on a regular basis. Banks using such models should construct and maintain appropriate databases on the actual quarterly performance of their equity exposures, as well as on the estimates derived using their internal models. Banks should also backtest the volatility estimates used within their internal models and the appropriateness of any external data used in the model. Banks will have data available on different equity exposures at different frequencies. For example, price data for public equities may be available daily, and price data for private equities may be available on a monthly or quarterly basis. Banks can divide their equity portfolio into several smaller portfolios based on data availability and conduct backtesting on the smaller portfolios. When sufficient data are available, banks should employ statistical-based measures of the accuracy of their VaR models.

VII. Consistency Between Internal Models Used for Equity Exposures and Risk Management Processes

S 10–4 Internal models used to calculate risk-based capital requirements for equity exposures must be consistent with models used in the bank's risk management processes and management information reporting systems.

24. The internal model should be fully integrated into the bank's risk management infrastructure. It should, when appropriate, be used to establish equity price risk limits, to evaluate alternative investments, and to measure and assess equity portfolio performance (including the risk-adjusted performance). The bank should demonstrate the internal model's role in risk management (using investment committee minutes, for example).

Chapter 11: Securitizations

Rule Requirements

Part III, Section 22(f): Securitization exposures. A bank must obtain the prior written approval of [AGENCY] under section 44 [of the NPR] to use the internal assessment approach for securitization exposures to ABCP programs.

Part V: Risk-Weighted Assets for Securitization Exposures

I. Overview

1. This chapter supplements the detailed discussion of the framework for securitization exposures in the NPR. It describes the concepts, eligibility criteria, and mechanics associated with applying each of the three allowed approaches—the ratings-based approach (''RBA''), the internal assessment approach (''IAA''), and the supervisory formula approach (''SFA''). It also discusses related topics, such as risk transference, implicit support, early amortization provisions, and control and validation. This guidance applies to a bank regardless of its role in the securitization—investor or originator.

S 11–1 Banks must use the securitization framework for any exposures that involve the tranching of credit risk (with the exception of a tranched guarantee that applies only to an individual retail exposure).

2. The securitization framework relies principally on one of two sources of information, where available: (1) An assessment of the securitization exposure's external credit risk ratings or (2) the IRB risk-based capital requirement and expected loss of the underlying exposures as if the exposures had not been securitized. See section 2 of the NPR for the definition of a securitization exposure.

3. To determine risk-weighted assets for securitization exposures, a bank must: (1) Identify all securitization exposures subject to the framework, (2) assign each exposure to an approach according to the specified hierarchy, and (3) calculate risk-weighted assets (or required deductions from capital) according to the requirements for the applicable approach.

S 11–2 Banks should develop written implementation policies and procedures describing the allowed approaches, methods of application, and designated responsibilities for complying with the securitization framework.

4. In addition to the IRB requirements, originating banks should maintain specific securitization policies and procedures including the appropriate accounting treatment for the securitization exposure (FASB 140, FIN 46R), pooling and servicing agreements for each securitization exposure (to assess compliance with risk transference and recourse requirements, waterfall structure, trigger requirements for early amortization structures), and contractual arrangements related to risk mitigation of the securitization exposure (net interest margin transactions, mitigating residual interest exposure).

5. Certain basic risk management practices are also important to the framework's implementation. The central component is a full written description, or implementation guide, detailing each step in the process. The guide should include all key processes, such as methods of identifying exposures, selecting approaches, documenting approvals and data elements, and establishing responsibility for oversight and quality control. The remainder of this chapter expands on how to apply the various approaches, as well as supervisory guidance regarding eligibility and sound risk management practices.

II. Scope of Application

6. Tranching of credit risk is the structuring of cash flows and credit exposure so that an investor's share of the credit losses differ from its pro rata interest in the underlying exposures. Another characteristic of a securitization exposure is that payments to the various parties depend on performance of the underlying exposures, as opposed to an obligation of the entity originating those exposures.

7. Examples of securitization exposures include asset-backed securities, mortgage-backed securities (including those issued by Fannie Mae and Freddie Mac),[24] stripped mortgage-backed securities, credit enhancements and liquidity facilities to asset-backed commercial paper (''ABCP'') programs, collateralized debt obligations (''CDO''), loan participation agreements that include a tranching of payments such as last-in and first-out, guarantees and credit derivatives that provide tranched (i.e., non-proportional) credit protection against a pool of credit exposures, reserve accounts, and other retained residual interests.

8. Since securitization transactions may be structured in a variety of ways, the economic substance of the transaction rather than its legal form should guide both the designation of exposures and the calculation of risk-based capital requirements.

III. General Principles of the Securitization Framework

A. Risk Transference

S 11–3 Securitization transactions must transfer credit risk to at least one

[24] Fannie Mae and Freddie Mac mortgage-backed pass-through securities are to be treated as securitization transactions even though the risk of the securitized mortgage pool has not been tranched among investors.

third party to qualify for treatment under the securitization framework.

9. Securitization exposures must meet all of the risk transference requirements imposed by Generally Accepted Accounting Principles (''GAAP'') and regulatory requirements. In this regard, banks should continue to use published supervisory guidance related to risk transference, recourse, and other activities that constitute implicit recourse.

10. For an exposure to qualify for treatment under the securitization framework, the transaction must meet the requirements outlined in Statement of Financial Accounting Standards No. 140 and must transfer credit risk from the originator of the underlying exposures to at least one third party. In synthetic securitizations, credit risk mitigants are often used to transfer the credit risk of the underlying exposures, which generally remain on the bank's balance sheet. In order to exclude the underlying exposures from risk-based capital requirements, banks must comply with the operational requirements for recognition of credit risk mitigants in synthetic securitizations set forth in section 41 of the NPR. When the transaction does not qualify for GAAP sales treatment, does not satisfy the risk transference requirement, contains an ineligible clean-up call, or the bank has tainted the transaction by providing implicit support to the transaction,[25] the bank must include the underlying exposures in the calculation of risk-based capital requirements as if the securitization transaction did not occur. For example, transactions reported as GAAP sales that do not transfer credit risk to third parties, such as transfers of assets subject to credit-enhancing representations and warranties, require the bank to include the underlying exposures in the calculation of risk-based capital as if the transfer had not occurred.

B. Implicit Support

S 11–4 Banks that provide implicit support to securitization transactions must hold risk-based capital as if the underlying assets had not been securitized, and must deduct from Tier 1 capital any after-tax gain-on-sale resulting from the securitization.

11. Implicit support is credit support provided by a bank in excess of its contractual obligation under the original terms of the transaction. The issuer provides such support often to maintain access to funding and/or to protect its reputation in the market. Providing implicit support violates the risk transference principles inherent in a securitization transaction and, for risk-based capital purposes, requires that the bank treat the underlying securitized assets as if the securitization transaction had not occurred.[26] For example, banks are considered to have provided implicit support when they either:

- Sell assets to a securitization trust or other special-purpose entity (SPE) at a discount from the price specified in the securitization documents (typically par value);
- Purchase assets from a securitization trust or other SPE at an amount greater than fair value;
- Exchange performing assets for nonperforming assets; or
- Provide credit enhancements beyond contractual requirements.

12. Policies governing securitization activities should explicitly refer to the issue of implicit support, and include criteria for identifying and reporting instances of implicit support. An independent risk management or review group should systematically monitor securitization transactions to identify actions that constitute implied support and ensure appropriate regulatory capital treatment is applied.

C. Servicer Cash Advances

13. The risk-based capital requirement for servicer cash advances generally will be calculated using either the RBA or SFA. The RBA can be used if the bank can assign an inferred rating to the servicer cash advance based upon a rated subordinated tranche. If the RBA is not available, and the bank can compute the risk parameter estimates for the SFA, the bank can apply the SFA.

14. A bank is not required to hold risk-based capital against the undrawn portion of an eligible servicer cash advance facility. An eligible servicer cash advance is a servicer cash advance facility in which:

- The servicer is entitled to full reimbursement of advances (except that a servicer may be obligated to make non-reimbursable advances if any such advance with respect to any underlying exposure is limited to an insignificant amount of the outstanding principal balance of the underlying exposure);
- The servicer's right to reimbursement is senior in right of payment to all other claims on the cash flows from the underlying exposures of the securitization; and
- The servicer has no legal obligation to, and does not, make advances to the securitization if the servicer concludes that the advances are unlikely to be repaid. The advance is made only after expected repayment is supported by a credit assessment that is consistent with prudent lending standards.

15. If these conditions are not satisfied, a bank that provides a servicer cash advance facility must determine its risk-based capital requirement for the undrawn portion of the facility in the same manner as the bank would determine its risk-based capital requirement for any other undrawn securitization exposure.

D. Clean-Up Calls

16. A clean-up call is a contractual provision that permits a bank to call securitization exposures before their stated maturity date. In a traditional securitization, a clean-up call is generally accomplished by repurchasing the remaining securitization exposures once the amount of underlying exposures or outstanding securitization exposures fall below a specified level and it becomes uneconomical to maintain the transaction. In the case of a synthetic securitization, the clean-up call may take the form of a clause that extinguishes the credit protection once the amount of underlying exposures has fallen below a specified level. An originating bank may exclude securitized exposures from its risk-weighted assets calculated in connection with a securitization that has a clean-up call only if the clean-up call is an eligible clean-up call as defined in the NPR. The following are required criteria for an eligible clean-up call:

- The exercise of the clean-up call is solely at the discretion of the servicer;
- The clean-up call is not structured to avoid allocating losses to securitization positions held by investors, or otherwise structured to provide credit enhancements to the securitization; and
- The clean-up call is only exercisable for traditional securitizations when 10 percent or less of the principal amount of underlying exposures or securitization exposures are outstanding, or for synthetic securitization transactions, when 10 percent or less of the principal amount of the original reference portfolio is outstanding.

S 11–5 A clean-up call constitutes implicit support if, in exercising the call, the bank provides support in

[25] In addition, as discussed in the NPR, if a bank provides implicit support to any securitization, the bank's primary Federal supervisor may require the bank to hold risk-based capital against the underlying exposures of some or all of the bank's other securitizations.

[26] A bank that provides implicit support is also subject to related disclosure requirements in section 42(h) of the NPR.

excess of its contractual obligation to provide support to the securitization.

17. The ultimate determination of whether the exercise of a clean-up call constitutes implicit support depends on the facts. If the bank affects a clean-up call on terms that differ from contractual provisions, the following actions will point to a finding of implicit support:

- Exercising a clean-up call that serves as the functional equivalent of a credit enhancement; or
- Purchasing assets from a trust or other SPE at an amount greater than fair value.

E. Maximum Capital Requirements for Securitization Exposures

S 11–6 The maximum risk-based capital requirement for all securitization exposures held by a bank associated with a single securitization transaction is the amount of risk-based capital plus expected losses that would have been required had the underlying exposures not been securitized.

18. Unless one or more of the underlying exposures does not meet the definition of a wholesale, retail, securitization, or equity exposure, the total risk-based capital requirement for all securitization exposures held by a single bank associated with a single securitization—including any risk-based capital requirement that relates to an early amortization provision, but excluding any capital requirements that relate to the bank's gain-on-sale or CEIOs (and any accrued interest receivables (''AIR'') that meet the definition of a CEIO) associated with the securitization—cannot exceed the sum of (i) the bank's total risk-based capital requirement for the underlying exposures as if the bank directly held the underlying exposures; and (ii) the bank's total expected credit loss for the underlying exposures.

19. If a bank has multiple securitization exposures to an ABCP program that provide overlapping coverage of the underlying exposures, such as when a bank provides a program-wide credit enhancement and multiple pool-specific liquidity facilities, the bank is not required to hold duplicative risk-based capital against the overlapping position. Instead, the bank may limit its capital requirement for the overlapping positions to the single applicable treatment that results in the highest capital requirement. However, if different banks have overlapping exposures to an ABCP program, each bank must hold capital against the entire amount of its exposure.

20. When a bank sponsors an ABCP program and is required to consolidate the program as a variable interest entity under GAAP solely because it qualifies as a primary beneficiary, it may exclude the consolidated ABCP program assets from risk-weighted assets. However, the decision to exclude the consolidated program from risk-weighted assets does not exempt the bank from holding risk-based capital against any exposures to that program in accordance with the overall securitization framework.

IV. Hierarchy of Approaches

S 11–7 Banks must follow the specified hierarchy of approaches to determine risk-weighted asset amounts for all securitization exposures.

21. The first step in determining the risk-weighted asset amount for a securitization exposure for either an investing or originating bank is to deduct entirely from Tier 1 capital all increases in capital due to after tax gain-on-sale income from the transaction. In addition, any CEIOs, including any AIRs that meet the definition of a CEIO, must be deducted 50 percent from Tier 1 capital and 50 percent from Tier 2 capital.[27] If the amount deductible from Tier 2 capital exceeds the amount of actual Tier 2 capital, the excess must be deducted from Tier 1 capital.

22. Next, the bank applies one of the three approaches for determining risk-weighted assets: The RBA, the IAA, or the SFA. The RBA and the IAA calculate risk-weighted assets using supervisory tables based on external or inferred ratings. Subject to specific conditions, the SFA may be used for securitization exposures when the IAA or RBA is not available. Securitization exposures that do not qualify for one of these three approaches are deducted from regulatory capital.

23. Banks must apply the three approaches according to the following hierarchy:

1. RBA—If the securitization exposure is not required to be deducted and qualifies for the RBA, the bank must apply the RBA.[28] In general, an originating bank qualifies to use the RBA if its retained securitization exposure has at least two external ratings or an inferred rating based on at least two external ratings, while an investing bank qualifies to use the RBA if its securitization exposure has one or more external or inferred ratings.

2. IAA or SFA—If a securitization exposure is not required to be deducted, does not qualify for the RBA, and is an exposure to an ABCP program, the bank may apply either the IAA or the SFA. However, the bank must consistently use either the IAA or the SFA when this type of exposure would be eligible for both approaches.

3. SFA—If the securitization exposure is not required to be deducted, does not qualify for the RBA, and is not an exposure to an ABCP program, the bank may apply the SFA if it is able to calculate, on an ongoing basis, the SFA risk parameters.

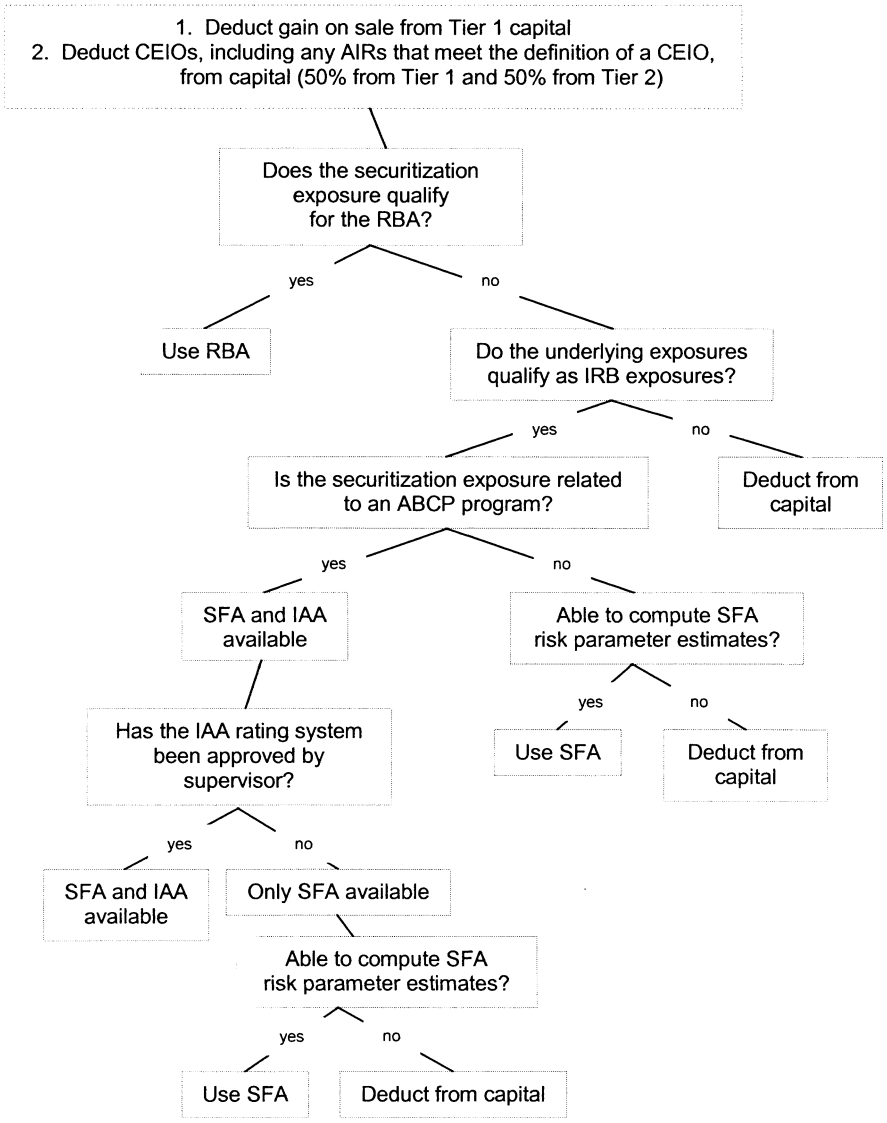
24. When a securitization exposure does not qualify for the RBA, IAA, or SFA, a bank is required to deduct the exposure 50 percent from Tier 1 capital and 50 percent from Tier 2 capital. If the amount deductible from Tier 2 capital exceeds the bank's actual Tier 2 capital, however, the bank must deduct the shortfall amount from Tier 1 capital.

25. The following diagram illustrates the hierarchy for the treatment of a securitization exposure for either an investing or originating bank:

[27] For specific guidance on the treatment of AIRs see the Interagency Advisory on the Regulatory Capital Treatment of Accrued Interest Receivable Related to Credit Card Securitizations, dated May 17, 2002, and the Interagency Advisory on the Accounting Treatment of Accrued Interest Receivable Related to Credit Card Securitizations, dated December 4, 2002.

[28] Regardless of any other provision, the risk weight for a non-credit enhancing interest-only residential mortgage backed security (*e.g.*, FNMA IO Strip), may not be less than 100 percent.

Securitization Framework – Hierarchy of Approaches



V. IRB Approaches for Securitization Exposures

A. Ratings-Based Approach

26. Banks may use the RBA to determine the appropriate risk weight for a securitization exposure if the exposure is externally rated, or for a non-rated exposure for which a rating can be inferred. The appropriate risk weight is multiplied by the securitization exposure amount to arrive at the appropriate risk-weighted asset amount.

S 11–8 In order to use the RBA, the securitization exposure must be externally rated by an NRSRO, or be eligible for an inferred rating.

27. For a bank to utilize the RBA, the securitization exposure must be rated by an NRSRO as defined in the NPR.

28. A rating may be inferred if the subject securitization exposure is senior to another securitization exposure in the transaction (that is backed by the same underlying obligations and is issued by the same issuer) that has an external rating from an NRSRO. The applicable rating to be applied for an inferred rating is the current rating of the subordinate rated tranche. Inferred ratings should be updated at least annually, or more frequently when warranted, so that any changes in the external rating or characteristics of the rated exposure are reflected in a timely manner. An inferred rating cannot be derived from a proxy securitization exposure (e.g., a similarly structured but separate securitization exposure).

S 11–9 The securitization transaction must have an external rating assigned by an NRSRO that fully reflects the credit risk associated with timely repayment of principal and interest.

29. When a securitization exposure is structured, the originating bank can elect to have the securitization transaction placed in the NRSRO's monitoring/surveillance program that requires a periodic review of the financial performance of the underlying exposures. By placing the securitization exposure in the NRSRO monitoring program, the integrity of the credit rating is maintained for the life of the securitization exposure, and thereby ensures that the credit rating fully reflects the entire amount of credit risk

with regard to all payments owed to the holder of the exposure. Securitization exposures receiving a rating only at origination are not eligible for the RBA. The external rating must take into account and reflect the entire amount of credit risk exposure the bank has with regard to all payments owed to it. If the bank is owed both principal and interest, the rating must fully reflect the credit risk associated with timely repayment of both. With certain securitization exposures, such as combination bonds, which generally are combinations of a subordinated, unrated securitization exposure and a highly rated principal-only strip, the principal component of the bond often receives a higher rating than the interest component. A rating structure such as this does not qualify as a full credit exposure rating, and therefore the RBA is not available. In the event that a rating does not capture the full credit exposure, the bank may use the SFA if applicable, or deduct.

30. When a bank has used the RBA (or IAA) to calculate its risk-based capital requirement for a securitization exposure whose external or inferred rating (or IAA rating) reflects the credit enhancement of a credit risk mitigation (''CRM'') technique, a bank may not obtain additional risk-based capital recognition of the CRM technique through the securitization CRM rules in section 46 of the NPR.

31. When a credit risk mitigant is not obtained by the SPE but rather is obtained by a bank separately to protect itself against losses on a specific securitization exposure (e.g., ABS tranche), the bank may use the applicable securitization CRM treatment to recognize the hedge as outlined in section 46 of the NPR.

S 11–10 Banks should document the factors that support their use of the RBA.

32. Factors the bank should document include the identification of the NRSROs, type of underlying exposures (e.g., wholesale, retail), seniority of the securitization exposure, pool granularity, and placement of reference tranches in the waterfall for inferred ratings.

33. Senior securitization exposures supported by granular pools receive special treatment under the RBA. Only one tranche may be considered ''senior'' for each transaction. In a traditional securitization where all tranches above the first-loss piece are rated, the most highly rated position would be treated as the senior tranche. However, when several tranches share the same rating, only the most senior tranche in the cash waterfall, according to security provisions in the indenture, would be treated as the senior position. In a synthetic securitization, a super-senior tranche would be treated as the senior tranche. Eligible servicer cash advances are not considered in the seniority assignment for the RBA.

34. Pool granularity refers to the number of different underlying exposures. The RBA considers the impact of pool granularity on credit risk by assigning higher risk-weight percentages to non-granular pools. Securitizations of retail exposures contain a significant number of underlying exposures and will be considered granular for risk-weighting purposes.

B. Internal Assessment Approach

Overview

35. A bank's exposures to ABCP conduit programs (i.e., liquidity facilities and credit enhancements) are considered securitization exposures for which the bank must hold risk-based capital. Where ABCP exposures qualify for the RBA approach, the RBA must be used to calculate risk-weighted assets. However, exposures such as ABCP liquidity facilities and credit enhancements are generally unrated. Subject to qualification standards, a bank may use either the IAA or the SFA; however, one approach must be used consistently for all the bank's exposures to ABCP programs.

36. To qualify for the use of the IAA, a bank must at a minimum demonstrate that its ABCP program meets specific operational requirements set forth in the NPR. A bank may apply the IAA to exposures related to ABCP programs and to exposures to programs that are similarly structured, which could include structured investment vehicles, tender option bonds, and variable note programs, as long as they meet the NPR's definition of an ABCP program. The bank must demonstrate that it has met the qualification standards for each asset class for which it has exposure.

37. The IAA requires a bank to use an internal credit assessment (''ICA'') framework that maps or corresponds directly to NRSRO rating criteria for a similar asset class. For example, if the pool of assets consists of credit card receivables, the bank's credit assessment for a liquidity facility or credit enhancement extended to the pool should be based on the NRSRO's rating criteria for credit card receivables. In order to use the IAA, the bank's ICA process should at a minimum (a) identify reliable historical loss rates on the underlying exposures, (b) map internal ratings to specific ratings of the NRSRO, as well as validate the mapping process to ensure its integrity and accuracy, and (c) document the criteria used to arrive at the ICA rating. See section 44(a)(1) of the NPR for a complete list of the criteria a bank's ICA process must meet in order for the bank to obtain approval from its supervisor to use the IAA.

38. After assigning an internal rating based on the appropriate ICA framework, the bank calculates risk-weighted assets by applying the applicable risk weights from the RBA tables to the amounts of the ABCP program exposures. Consistent with the RBA, the applicable risk-weight assignment requires three additional inputs—the seniority of the exposure, an assessment of pool granularity, and whether the ICA is a long- or short-term rating. Pool granularity is based on the number of underlying exposures, with exposures to a single obligor aggregated. ABCP liquidity facilities would be considered senior exposures provided they meet the definition of a senior securitization exposure in the NPR.

39. For example, the ICA for a $10 million (maximum contractual value) liquidity facility has an ICA that is equivalent to a long-term external rating of ''AA.'' Using the RBA tables, a risk weight of 8 percent is applicable, resulting in risk-weighted assets of $800,000 provided (1) the position is senior exposure, (2) the pool is granular, and (3) there is a long-term rating (e.g., ''AA''). If it is determined that the pool is non-granular, the risk weight is 25 percent, or risk-weighted assets of $2.5 million.

40. The IAA's reliance on an NRSRO's rating methodology and ratings criteria for the applicable asset class does not reduce the level of analysis, review, and due diligence that the bank should conduct as part of the initial purchase decision, and regularly thereafter.

41. The systems and processes used by the bank for risk-based capital purposes must be consistent with the bank's internal risk management processes and management information reporting systems. For example, the conduit's ICA ratings process should be linked to the required seller-provided credit enhancement levels, establishment of transaction dynamic trigger levels, tracking of individual obligor exposure levels, and establishment of concentration levels. Also, the risk management systems should capture the market (interest rate mismatch), liquidity (commercial paper maturity laddering, extendable funding products) and operational (integration of servicer and investor reporting) risks associated with the conduit activities.

VI. Internal Credit Assessment Process in the IAA

S 11–11 Banks' internal credit assessment processes should be comprehensive, transparent, independent, well-defined, and fully documented.

42. The ICA process should address the full range of activities, including pre-purchase analysis of the proposed transaction, verification of the seller's representation of the assets' risk characteristics, the assignment of internal credit assessments, and on-going validation to ensure the integrity of the process and rating accuracy.

43. The bank must have an effective system of controls and oversight that ensures compliance with these operational requirements and maintains the integrity and accuracy of the internal credit assessments. The bank must have an internal audit function independent from the ABCP program business line and internal credit assessment process that assesses at least annually whether the controls over the internal credit assessment process function as intended.

44. Banks should be able to demonstrate that these assessments accurately capture and quantify the risk inherent in these exposures. To facilitate transparency, banks should have (1) approved policies and procedures, (2) a written and detailed summary of the processes, including the roles and responsibilities of relevant parties, and (3) management information reports on items such as pool status, usage of liquidity and/or credit enhancement facilities, and other risk management issues (e.g. level of losses relative to seller-provided credit protection or proximity to termination events).

45. The bank should clearly document its processes for determining the required level of seller-provided credit enhancement, including the level of historical losses and the NRSRO's stress factor used to establish equivalency to a specific external rating. The bank should be able to demonstrate that the pool's loss estimate is empirically based, credible, and predictive of expected losses. Historical and current information on delinquencies, charge-offs, recoveries, dilution,[29] and obligor and geographic concentrations should be maintained to support these estimates.

46. The time horizon for historical losses should be consistent with the number of years used in the NRSRO's external rating criteria. For instance, with respect to the performance of a pool that is comprised of trade receivables, the program administrator should use at least three years of loss data when determining the required level of credit enhancement.

47. When adjustments are made to an internal credit assessment that are based on factors not included in the NRSRO's rating criteria, written rationale and support should be available. In addition, the bank should be able to provide evidence that the adjustments were subject to an appropriate approval process.

48. When reviewing the seller's risk profile, the sponsoring bank (or program administrator) should analyze both the credit risks of the underlying assets and the seller's risk profile. The transaction summary provided by the seller should include information on the default risk of the underlying assets, including historical loss characteristics, concentrations, delinquencies, and payment history. In addition, the bank should assess the quality of the seller's underwriting practices as an indicator of the future performance of the underlying assets.

49. The assessment of the seller's risk profile should include past and expected financial performance and condition (e.g., leverage, cash flow, and interest coverage), the seller's current market position, expected future competitiveness, and debt rating.

50. Credit and investment policies should include the following: Well-defined underwriting standards for purchased assets; the minimum requirements for a seller's credit quality; limits on transaction size; limits on concentrations for obligors, asset types, or geographic exposure; required structural features; procedures for monitoring and reporting pool performance; and required levels of liquidity and credit support.

51. The bank should maintain a transaction summary to support each ABCP program exposure. The summary should include the following: The structure of the pool transaction; the type and details of the bank's support for the program or pool; a profile of the seller (asset originator); the criteria used to determine the eligibility of assets; the risk characteristics of the purchased assets (e.g., credit quality and tenor); dilution risk; statistics on the historical performance of the underlying assets and other similar asset pools; and termination events.[30]

52. When the liquidity facility and either transaction specific or program-wide credit enhancement overlap, banks are required to hold capital only once for any overlap. However, banks must allocate the program-wide credit enhancement overlap across pools that results in the highest risk-based capital requirement. For example, assume an ABCP program is made up of a pool of credit card receivables, a pool of loan receivables, and a pool of trade receivables. The bank has issued liquidity facilities for $400,000 for each pool and a $120,000 program-wide credit enhancement facility. The liquidity facilities for the credit card and loan pools are internally-rated as ''AAA,'' with the trade receivables' pool rated as ''A+.'' The credit enhancement is rated ''A.'' The appropriate risk-based capital charge for the liquidity facility and credit enhancement is detailed in the table below.

Pool Summary

Conduit funding	Purchase authorization	Pool balance	LF coverage	LF tenor	Internal credit ass.	NRSRO equivalent
Credit Card	$400,000	$0	$400,000	366 day	2	''AAA''
Account Rec.	400,000	250,000	400,000	366 day	2	''AAA''
Trade Rec.	400,000	300,000	400,000	366 day	3	''A+''

[29] Dilution is the reduction of the asset receivable due to customer returns of sold goods, warranty claims, disputes between the seller and its customers, and other factors. Sellers are generally required to establish a reserve to cover a multiple of historical dilution. The adequacy of the dilution reserve is reviewed at the inception of the transaction and may or may not be incorporated in the seller-provided credit enhancement for the pool of assets sold to the conduit.

[30] Termination events, also referred to as ''dynamic'' or wind-down triggers, are used to mitigate the occurrence of losses due to a deteriorating asset pool or an event that may hinder the conduit's ability to repay maturing commercial paper. Pool-specific triggers include the insolvency or bankruptcy of the seller/servicer of assets, a downgrade of the seller's credit rating below a certain rating grade, or the deterioration of the asset pool to the point where charge-offs, delinquencies, or dilution reaches predetermined levels. Program-wide triggers include the conduit's failure to repay maturing commercial paper or draws on the program-wide credit enhancement that exceed a certain amount.

Conduit funding	Purchase authorization	Pool balance	LF coverage	LF tenor	Internal credit ass.	NRSRO equivalent
Total	1,200,000	550,000	1,200,000			
Credit Enhancement	120,000				4	"A"

Overlap and Risk-Weighted Assets

	LF exposure amount net of overlap adjustment	LF RWA	CE exposure amount net of overlap adjustment	CE RWA	Total RWA
Credit Card	$0	$0	$120,000	$24,000	$24,000
Account Rec.	*250,000	**17,500	0	0	17,500
Trade Rec.	300,000	30,000	0	0	30,000
Total Risk-Weighted Assets		$47,500		$24,000	$71,500

* $250,000 − 0 = $250,000.
** (LF − CE Overlap) × RWA% for respective NRSRO equivalent rating ($250,000 × 7% = $17,500).

53. Using the same underlying exposures as in the above example, the bank has issued liquidity facilities for $400,000 for each pool and a $120,000 credit enhancement facility. However, the credit enhancement in this example is transaction specific, allocated at $40,000 per transaction. The liquidity facilities for the credit card and loan pools are internally-rated as ''AAA,'' with the trade receivables'' pool rated as ''A+.'' The credit enhancement is rated ''A.'' The appropriate risk-based capital charge for the liquidity facility and credit enhancement is detailed in the table below.

Pool Summary

Conduit funding	Purchase authorization	Pool balance	LF coverage	LF tenor	Internal credit ass.	NRSRO equivalent
Credit Card	$400,000	$0	$400,000	366 day	2	"AAA"
Account Rec.	400,000	250,000	400,000	366 day	2	"AAA"
Trade Rec.	400,000	300,000	400,000	366 day	3	"A+"
Total	1,200,000	550,000	1,200,000			
Credit Enhancement	120,000				4	"A"

Overlap and Risk-Weighted Assets

	LF exposure amount net of overlap adjustment	LF RWA	CE exposure amount of overlap adjustment	CE RWA	Total RWA
Credit Card	$0	$0	$40,000	$8,000	$8,000
Account Rec.	*210,000	**14,700	40,000	***8,000	22,700
Trade Rec.	260,000	26,000	40,000	8,000	34,000
Total Risk-Weighted Assets		$40,700		$24,000	$64,700

* $250,000 − 40,000 = $210,000.
** (LF − CE Overlap) × RWA% for respective NRSRO equivalent rating ($210,000 × 7% = $14,700).
*** CE × RWA% for respective NRSRO equivalent rating ($40,000 × 20% = $8,000).

S 11–12 Banks should analyze the servicer's capabilities and document the analysis in the internal assessment.

54. The analysis should consider the servicer's data systems, data capabilities (or consider the capabilities of the servicer's data systems), excess capacity, collections processes, reliance on vendors or other service bureaus, and backup servicing arrangements. A separate rating for the servicer may also be assigned, and should consider the servicer's financial position, operating capabilities, historical pool performance, and other criteria such as a publicly available NRSRO servicer rating report.

VII. Validation of IAA

S 11–13 The bank must validate its ICA process on an ongoing basis and at least annually the ICA process and results must be subject to the full range of the bank's IRB validation activities.

55. The bank should review the relationship between the credit assessment process and the NRSRO's current rating criteria to ensure that internal credit assessments are appropriately aligned to external ratings and reflect the NRSRO's rating criteria.

56. The robustness of the validation process should be consistent with the complexity and volume of the bank's activities. Validation should consider the relevance and appropriateness of the NRSRO rating methodologies to the purchased assets, the integrity of the mapping process and its application to the bank's ABCP program exposures, and the quality of the bank's risk

management and internal controls in this business line.

57. Developmental evidence is particularly relevant to the IAA. A bank should be able to provide evidence to support the integrity of its ICA process. Written documentation should include, but is not limited to: (1) How the process is consistent with the NRSRO's rating criteria to which the bank is mapping assessments, (2) the process for verifying the seller's estimates of historical loss for the purchased assets, and (3) the methodology used to assess the risk characteristics of the asset seller, the servicer, and program administrator (when not the bank). The bank should be able to support that its process is complete and that its ICAs are accurate based on their design and implementation.

58. Process verification should focus on whether the policies and procedures are sufficiently detailed to support transparency and replication of the assessments, as well as the extent to which the process operates as designed. The process review should include (1) quantifying risk across the spectrum of the bank's exposures, and (2) evaluating the completeness, accuracy, and applicability of the data that supports the securitization framework.

59. The bank should perform backtesting or outcomes analysis on the ICA ratings. This should also include tracking the financial performance of the underlying exposures including the ICA rating for the securitization exposure. At a minimum, the review process should be performed annually, or more frequently when there are significant changes in the NRSRO's rating criteria or the performance of the underlying assets warrants an adjustment to the bank's internal assessment. Performance analysis should cover not only the level of excess spread, but also trends and volatility in excess spread components such as interest and fee revenues, bond coupons, payment rates, loss rates, and other variable components affecting securitization performance.

A. Supervisory Formula Approach

Overview

60. The SFA may be available to determine the risk-based capital requirement for unrated securitization exposures when an external rating is not available or cannot be inferred, or when the bank chooses not to use, or does not qualify to use, the IAA.[31] The SFA calculation relies, in large part, on the risk-based capital requirement that would be assessed had the exposures underlying the securitization not been securitized. The SFA relies on this calculation as its starting point since securitizing a pool of exposures does not change the overall amount of credit risk, but merely changes how credit risk is distributed to the holders of the securitization exposures. Regulatory overrides, based on supervisory judgment, have been added to this pure model-based assessment of credit risk to ensure that (1) a minimum regulatory capital requirement is assessed on all securitization exposures, (2) tranches with insufficient credit enhancement are assessed a dollar-for-dollar capital requirement, and (3) model discontinuities are minimized.

Common Unrated Securitization Exposures Subject to the SFA

61. The SFA provides banks a means of calculating risk-based capital requirements for unrated securitization exposures. The SFA allows for a more risk sensitive capital requirement for higher quality, unrated securitization positions that lie above the K_{IRB} boundary, provided the bank has access to the information necessary to parameterize the SFA. Regardless of the information the bank has on the underlying securitized exposures and the securitization structure, CEIOs, including any AIRs that meet the definition of a CEIO, will remain subject to deduction.

62. Banks could use the SFA to determine risk-based capital requirements for the following common unrated securitization exposures:

- Unrated credit enhancements, including cash collateral, and spread accounts;
- Unrated CDO equity tranches;
- Other unrated retained or purchased subordinated securities from traditional or synthetic securitizations;
- Loans sold or serviced with recourse when the risk retained is of a different priority than the risk transferred;
- Loan participations and syndications when there is other than a pro-rata form of distribution;
- Unrated securitization exposures resulting from a bank's participation in the FHLB Mortgage Partnership Finance Program or Mortgage Purchase Program;
- Unrated exposures resulting from pool-level mortgage insurance programs;
- Senior synthetic securitization exposures when a rating cannot be inferred;
- MBS/ABS retained by the originator with less than two external ratings; and
- ABCP credit enhancements and liquidity facilities for which the bank has not received approval to use the IAA, or chooses for any reason not to use it.

The above is intended to provide examples of securitization exposures that would be subject to the SFA; however, there are likely additional securitization exposures that could be evaluated with the SFA. As the securitization market evolves, additional structures may emerge that will be subject to the SFA.

Implementation of the SFA

63. Banks are required to provide seven inputs when implementing the SFA. These inputs include:

- The amount of underlying exposures (UE);
- The sum of the IRB capital requirement and expected loss on the underlying exposures, divided by UE (K_{IRB});
- The effective number of underlying exposures (N);
- The exposure-weighted average loss given default of the underlying exposures (EWALGD);
- The percentage of the tranche of interest the bank owns (TP);
- The thickness of the tranche of interest (T) in relation to UE; and
- The credit enhancement level for the tranche of interest (L).

64. To use the SFA the bank must have these inputs to calculate the capital requirement on the underlying exposures. The first four inputs (UE, N, EWALGD, and K_{IRB}) require the bank to have a detailed knowledge of the characteristics of the underlying securitized exposures. The remaining three inputs (TP, T and L) require detailed knowledge of the structural features of the securitization.

65. Since the calculation of K_{IRB} requires detailed knowledge of the underlying exposures, the SFA may be difficult for an investor in an unrated securitization exposure to implement. For example, if a bank provides credit enhancement to wholesale exposures originated and securitized by another party, the bank as credit enhancer may not have access to the data to accurately derive the inputs necessary (e.g., and PD, LGD, M and EAD) to calculate K_{IRB}. In this situation, the bank as credit enhancer would not be able to use the SFA to compute regulatory capital requirements on the unrated securitization exposure, and would be required to deduct the exposure from regulatory capital.

66. Banks must also be prepared to update the SFA inputs quarterly. Because the output of the SFA is

[31] The exposure may be related to a conduit program, but the bank does not meet the operational standards to use the IAA. Under this scenario, banks may use the SFA.

predicated upon K_{IRB}, any changes in the quality of the underlying exposures will result in a change in the SFA capital requirement. For example, deterioration in the collateral values of the underlying exposures would likely result in increased values for EWALGD and K_{IRB}, which would generate a higher SFA capital requirement for each securitization tranche. Additionally, the prepayment of smaller exposures in a pool may lead to a more concentrated, riskier pool as N decreases.

Calculation of K_{IRB}

67. K_{IRB} represents the ratio of (i) the IRB capital requirement plus the expected credit losses of the underlying exposures had they not been securitized to (ii) UE, which is discussed below. All underlying exposures should be included in the calculation of K_{IRB}, including assets in reserve accounts. The counterparty credit risk charge associated with derivative instruments should also be reflected in the numerator of K_{IRB}, while the EAD of derivatives should be reflected in the denominator. The calculation of K_{IRB} should also reflect the effects of any credit risk mitigant that is applied on the underlying exposures that benefits all the securitization exposures. CEIOs, including any AIRs that meet the definition of a CEIO, should not be included in the calculation of K_{IRB}.

68. When banks have established a valuation allowance other than an ALLL or liability reserve on an underlying exposure, both the numerator and denominator of K_{IRB} should be calculated using the gross amount of the exposure without the specific provision. In this situation, the valuation allowance can be used to reduce the amount of deduction from capital associated with the securitization exposure. A detailed application of this treatment appears in Example 2 of this chapter's Appendix A.

Calculation of UE

69. The amount of underlying exposures (UE) is the EAD of any underlying wholesale and retail exposures (including the amount of any funded spread accounts, cash collateral accounts, and other similar funded credit enhancements) plus the amount of any underlying exposures that are securitization exposures plus the adjusted carrying value of any underlying equity exposures. For purposes of the SFA, the amount of an on-balance sheet securitization exposure is: (i) The bank's carrying value, if the exposure is held-to-maturity or for trading; or (ii) the bank's carrying value minus any unrealized gains and plus any unrealized losses on the exposure, if the exposure is available-for-sale. The amount of an off-balance sheet securitization exposure is the notional amount of the exposure. For a commitment, such as a liquidity facility extended to an ABCP program, the notional amount may be reduced to the maximum potential amount that the bank currently would contractually be required to fund. For an OTC derivative contract that is not a credit derivative, the notional amount is the EAD of the derivative contract as calculated in section 32 of the NPR.

Calculation of N and EWALGD

70. Although the SFA can be used for a pool containing only one asset, the SFA generally yields higher risk-based capital requirements for highly concentrated, non-granular pools. Therefore, the effective number of exposures (N) weights each exposure by its size to account for the higher risk in more highly concentrated, non-granular pools. When calculating N, multiple exposures to the same borrower are considered a single exposure. A sample calculation of N is included in Appendix A.

71. The exposure-weighted average loss given default (EWALGD) is the LGD of each exposure weighted by the size of each exposure. The weighting process is designed to give the LGD of larger exposures more weight in determining the EWALGD of the overall pool. A sample calculation of exposure-weighted EWALGD is also included in Appendix A.

72. For retail securitizations, banks are not required to calculate N and EWALGD. The two SFA variables— h and v —requiring N and EWALGD as inputs, are reduced to 0 for securitizations where all underlying exposures are retail exposures.

73. A simplified method of calculating N and EWALGD is also available for securitizations as long as the size of the largest exposure is known with certainty and is no larger than 3 percent of the entire pool. In this case, banks may set EWALGD = 50% and N can be calculated as:

$$N = \frac{1}{C_1 C_m + \left(\frac{C_m - C_1}{m-1}\right)\max\{1 - mC_1, 0\}}$$

Where:

- C_1 is the largest exposure in the pool;
- C_m is the share of the pool composed by the ''m'' largest underlying exposures; and
- ''m'' is selected by the bank.

Alternatively, if only C_1 is available and is no more than .03, a bank may set EWALGD at 50% and N at $1/C_1$. When determining N and EWALGD for a particular non-retail securitization, banks should document which methodology for calculating N and EWALGD is applied.

74. The remaining three required inputs necessary to implement the SFA—the percentage of the tranche of interest the bank owns (TP), that tranche's credit enhancement level (L), and that tranche's thickness (T)—require the bank to understand the securitization's structure and loss prioritization. Banks should document the amount of the tranche they own relative to the outstanding issuance of the tranche in order to accurately calculate TP. Additionally, banks should document their understanding of the securitization's structure and loss prioritization in order to accurately calculate L and T.

75. Banks must also update their calculations of TP, L and T on an ongoing basis. For example, payments to senior tranches in a particular structure may result in increases in L for junior tranche holders. Increasing defaults or loss severity in the underlying exposures may reduce L and T. Additionally, a bank's decision to mitigate its exposure through a partial sale of a particular tranche will reduce TP.

Calculation of T, L, and TP

76. T is the ratio of the amount of the tranche of interest to UE. L is the sum of (i) T to (ii) UE, for all tranches subordinate to the tranche of interest. The current outstanding principal balance or notional amount of the tranche of interest should be used when calculating T. TP is the ratio of the amount of the bank's securitization exposure to the amount of the tranche that contains the securitization

exposure. L should be measured without any consideration of the effects of tranche-specific credit enhancement (e.g., third party guarantees or collateral that benefit only the tranche of interest).

77. UE must equal the sum of the individual thickness levels of each tranche. Therefore, credit enhancement based upon future cash flows, such as excess spread, CEIOs, non-credit enhancing IOs, or the subordination of fees in the cash flow waterfall, should be excluded for purposes of calculating L and T. Both L and T should include only funded reserve and spread accounts. Derivatives embedded in securitization structures should be measured based only upon current mark-to-market value, if positive, without regard to potential future exposure.

78. Cash advances made by a servicer to an SPE to cover delinquent or late payments on the underlying exposures should be included in the calculation of L and T. When a servicer makes a cash advance to an SPE, it puts money into the SPE in order to pay down investor tranches; the pay-down of investor tranches does not bring any corresponding reduction in the principal balance of the underlying exposures. Therefore, in order for the sum of the tranches to equal UE, servicer cash advances should be considered in the calculation of L and T. Servicer cash advances that are not considered credit enhancing can be assumed to be the most senior securitization exposure in a securitization, with L calculated accordingly. For servicer cash advances that are in any way credit enhancing, the calculation of L should reflect the advance's degree of subordination.

79. Refer to this chapter's Appendix A ''Description of the Supervisory Formula Approach (SFA),'' for further details.

Special Considerations for Re-securitizations

80. Re-securitizations, such as CDO-squared, represent a new securitization in which the underlying exposures are themselves securitization interests and present a unique challenge in the calculation of UE, N, EWALGD and K_{IRB}. As a general rule, banks holding securitization exposures in re-securitizations should not ''look through'' to the exposures underlying the securitized securitization tranches when calculating UE, N, EWALGD and K_{IRB} and must set EWALGD equal to 100 percent for re-securitizations.

81. For example, if a bank holds an unrated securitization exposure in which the underlying exposures consist entirely of rated securitization interests, the bank first would sum the exposure amounts associated with these rated securitization interests to obtain UE. Next, the bank would use the RBA to determine K_{IRB} for these rated securitization interests, applying dollar-for-dollar capital to those exposures rated below BB−. Since the RBA risk weights include expected losses, no additional adjustment to K_{IRB} for expected losses is necessary. After determining K_{IRB}, the bank calculates the effective number of exposures based upon the relative size of the underlying securitization tranches included in the re-securitization pool, without ''looking through'' to the exposures underlying the securitized tranches. Next, the bank would assume that EWALGD equals 100 percent. At this point, the bank would have sufficient information on the underlying exposures to apply the SFA to the unrated re-securitization tranche of interest.

Pool Level Mortgage Insurance

82. Certain transactions may incorporate pool insurance as a form of credit enhancement for a pool of mortgage loans. Pool insurance can take various forms but generally provides insurance coverage for the pool of loans up to a maximum amount (a ''stop loss'' level) and can include loss coverage for each loan within the pool. The extent of coverage is negotiable and may result in 100 percent loss coverage on defaulted loans, or modified pool insurance that results in lower or variable levels of coverage on defaulted loans using loan-to-value limits, for example.

83. The credit risk mitigation benefits of pool insurance may be recognized in determining the appropriate risk-based capital requirement. Pool insurance that covers all or a pro rata share of all losses in a pool is recognized in the retail segmentation process (see Chapter 4, S 4–4 and accompanying text). Pool insurance that incorporates a tranching of credit risk is addressed in the securitization framework. In circumstances where a securitization structure with external credit ratings benefits from pool level insurance, such ratings incorporate the effects of credit risk mitigation and would, under the securitization framework (RBA), provide a method for the assessment of the appropriate capital requirement. For unrated securitization transactions, the credit risk mitigation effect of the pool insurance would need to be assessed under the SFA framework. The pool insurance and its application to the pool assets should be fully documented. Specifically, the documentation should describe and support the quantification of the credit risk that is being absorbed by the pool insurance, and detail how cash proceeds from the pool insurance are applied within the waterfall structure to effect a reduction in credit risk.

84. For securitization exposures where the underlying exposures benefit from guarantees such as pool level mortgage insurance, the bank may be able to utilize the synthetic securitization rules to calculate the benefit of the guarantee. The bank should ensure that securitizations for which the SFA or synthetic securitization is applied have reasonably strict contractual loss prioritization rules embedded into the deal. The following example outlines the process for calculating the capital requirement for a securitization that contains a pool level credit risk mitigant with a stop loss level:

Example

Pool level insurance covers the first $8 of loss on a $100 retail mortgage loan pool.

Step Process

1. Calculate the risk-based capital requirement for the underlying exposures according to the retail IRB rules: EL estimation, retail segmentation, PD and LGD estimation, and the retail risk-weight function;

2. Use the risk-based capital requirement from step 1 to determine K_{IRB} and then use the SFA to calculate the risk-based capital requirement on the $92 senior position (where the $8 first loss coverage of the insurance is treated as a junior tranche);

3. Calculate the risk-based capital requirement on the $8 position as if it were a direct exposure to the insurer using the guarantor's PD, the bank's estimate of the guarantor's ELGD and LGD, and the corporate risk-weight function. The PD of the guarantor is subject to the 3 basis point wholesale floor; and

4. The total risk-weight capital requirement is the sum of the capital requirements in steps 2 and 3.

Loss Prioritization

S 11–14 Banks should document the securitization structure and loss prioritization.

85. A bank may use the SFA only if it can calculate each of the SFA input parameters on an ongoing basis. For the purpose of calculating L, the credit enhancement level for the tranche of interest, this requirement implies that bank must be able to calculate how the pool's credit losses will be allocated among the deal's various tranches not only at the deal's inception, but over

time. Otherwise, the SFA may not be used.

86. For some transactions, the allocation of credit losses among tranches may depend on certain contingencies, such as the specific timing of credit losses over the life of the deal, the possibility that subordinated tranches may amortize prior to full retirement of senior tranches, the speed at which reserve accounts will be built up through retained excess spread, or structural features whereby the losses allocated to a particular tranche may depend on how these losses are distributed among the exposures in the underlying pool. The existence of such contingencies does not automatically disqualify a bank from using the SFA to compute the capital charge for an unrated securitization exposure. However, the structure of the transaction should be sufficiently clear cut to enable the bank to determine the loss prioritization associated with each potential contingency. Furthermore, the calculation of L should address contingencies in a manner that is demonstrably conservative, for example, by calculating L to reflect those contingencies that are least favorable to the bank. In all cases, the calculation of L must comply with applicable rules for recognizing credit enhancements (e.g., unfunded reserve accounts may not be recognized).

VIII. Early Amortization Provisions

87. In addition to holding capital against any retained interest in a securitization transaction, originating banks are required to hold capital against the investors' interest (both drawn and undrawn balances) in a securitization that includes one or more underlying exposures in which the borrower is permitted to vary the drawn amount within an agreed limit under a line of credit and that contains an early amortization feature. The likelihood of triggering an early amortization increases as the level of excess spread declines. Accordingly, a bank would be required to hold increasing amounts of risk-based capital as the probability of an early amortization event increases. Total risk-based capital requirements for securitization transactions subject to the early amortization capital requirement continue to be limited by the maximum capital requirement discussed earlier. Policies should also address the use of early amortization clauses, including realistic consideration of contingency funding plans, capital plans, and reporting systems necessary to monitor and assess the risk and likelihood of an early amortization event.

88. For an originating bank, the risk-weighted asset amount for the investors' interest in the securitization is equal to the product of the following four quantities: (1) The investors' interest EAD; (2) the appropriate conversion factor; (3) K_{IRB}; and 12.5. Under the securitization framework, the investors' interest is made up of the investors' drawn balances and the EAD associated with the investors' undrawn lines. The undrawn balances of the securitized exposures would be allocated between the seller's and investors' interests on a pro rata basis, based on the proportions of the seller's and investors' shares of the securitized drawn balances.

89. Once the transaction's structure has been determined, the level of excess spread must also be considered in determining the applicable credit conversion factor for uncommitted credit lines. To determine the capital to be held against the investors' interest in a securitization of uncommitted retail exposures, the bank should compare the three-month average excess spread to the point at which the bank is required to trap excess spread as required by the structure. When the transaction does not require excess spread to be trapped, the trapping point is 4.5 percent. For securitization trusts that issue several series with spread capture points that vary (e.g., credit card master trust structures), the trapping point for this provision would be the most conservative series in the trust. The bank should divide the excess spread level by the trapping point, and then reference Table 8 in section 47 of the NPR to determine which conversion factor is applicable.

IX. Data Management Requirements

A. Data Elements

S 11–15 Banks should retain the specific data elements necessary to calculate the appropriate securitization risk-based capital requirement.

90. Reporting systems should produce, at least monthly, information that captures overall securitization activity, as well as specific data elements of individual transactions. Performance tracking should include vintage performance, cash collections, cash flow sensitivity, covenant compliance, and, when applicable, potential for early amortization events. Accounting methods, residual valuation methods, and regulatory reporting requirements should be in writing and consistently applied. The valuation assumptions for retained interests and servicing assets or liabilities should be conservative, fully documented, and reviewed by senior management on a regular basis. Accurate and timely risk-based capital calculations should be maintained that include the recognition and reporting of any recourse obligation resulting from securitization transactions.

91. Refer to this chapter's Appendix B, ''Data Elements for Securitization Exposures,'' for further details on the data elements that a bank's reporting systems should electronically capture and store.

Appendix A: Description of the Supervisory Formula Approach (SFA)

This appendix provides illustrative examples to demonstrate how the framework described in this guidance applies to different securitization exposures. The examples provide insight into the SFA capital calculation and the K_{IRB} boundary, as well as the supervisory capital add-ons, in addition to its application to products which represent tranched cover.

The supervisory formula capital requirement for a given unrated securitization exposure is calculated as UE * TP multiplied by the greater of: (i) $.0056 \cdot T$, or (ii) $S[L + T] - S[L]$ where:

$$(1)\quad S[Y] = \begin{cases} Y & when\ Y \le K_{IRB} \\ K_{IRB} + K[Y] - K[K_{IRB}] + \dfrac{d \cdot K_{IRB}}{20}\left(1 - e^{\frac{20 \cdot (K_{IRB} - Y)}{K_{IRB}}}\right) & when\ Y > K_{IRB} \end{cases}$$

$$(2)\quad K[Y] = (1-h) \cdot \left[\left(1 - \beta[Y; a, b]\right) \cdot Y + \beta[Y; a+1, b] \cdot c\right]$$

$$(3)\quad h = \left(1 - \frac{K_{IRB}}{EWALGD}\right)^{N}$$

$$(4)\quad a = g \cdot c$$

$$(5)\quad b = g \cdot (1-c)$$

$$(6)\quad c = \frac{K_{IRB}}{1-h}$$

$$(7)\quad g = \frac{(1-c) \cdot c}{f} - 1$$

$$(8)\quad f = \frac{v + K_{IRB}^{\ 2}}{1-h} - c^2 + \frac{\left(1 - K_{IRB}\right) \cdot K_{IRB} - v}{(1-h) \cdot 1000}$$

$$(9)\quad v = K_{IRB} \cdot \frac{\left(EWALGD - K_{IRB}\right) + .25 \cdot \left(1 - EWALGD\right)}{N}$$

$$(10)\quad d = 1 - (1-h) \cdot \left(1 - \beta[K_{IRB}; a, b]\right)$$

RWA are determined when the supervisory formula output is multiplied by 12.5.

The factor (i) above imposes a 56 basis point minimum or floor IRB risk-based capital requirement per dollar of tranche exposure. Regulators have imposed this floor because the supervisory formula regularly produces a risk-based capital requirement of nearly zero for high quality tranches that, nonetheless, have positive credit risk. The floor is equivalent to the RBA risk-based capital requirement for an externally rated AAA securitization exposure, which lessens the potential regulatory capital arbitrage opportunities that could arise.

Factor (ii) represents the supervisory formula, which derives capital for the tranche in question by computing capital for the tranche of interest and all tranches beneath it (S[L + T]) and subtracting from that the capital for all tranches beneath the tranche of interest (S[L]). For tranches with credit enhancement levels below K_{IRB} ($Y \le K_{IRB}$), the supervisory formula assigns a dollar-for-dollar capital requirement.

For tranches with greater credit enhancement levels ($Y > K_{IRB}$), the supervisory formula produces a risk-based capital requirement that is a blend of credit risk modeling and supervisory judgment. The function K[Y] represents a pure model-based estimate of the underlying securitized pool's aggregate systematic or non-diversifiable credit risk that is attributable to a first-loss position covering loss up to and including Y. Because the tranche of interest covers losses over a specified range (defined in terms of L and T), its systematic risk can be represented as K[L + T] − K[L].

Unquestionably, the supervisory formula appears very complex, but actually the mechanics are algebraic in nature and merely require the user to determine certain inputs and solve. To better understand the components of the supervisory formula, it is best to begin with the model-based estimate of credit risk, the K[Y] term. This estimate of risk is given by the following equation:

$$(2)\quad K[Y] = (1-h) \cdot \left[\left(1 - \beta[Y; a, b]\right) \cdot Y + \beta[Y; a+1, b] \cdot c\right]$$

where β[Y;a,b] is shorthand for the Beta distribution. For the purpose of calculating the supervisory formula, it is sufficient to know that the Beta distribution, when suitably transformed and normalized, can be used to model the loss distribution given that the systematic risk factor is at the 99.9th percentile. Even more concretely, the Beta distribution evaluated at the specified parameters is a number which can be readily calculated in Excel using the betadist (L,a,b) function.

The model used to estimate the non-diversifiable risk in the pool of exposures is developed from the class of credit value-at-risk (CVaR) models known as asymptotic single risk factor models (ASRF models). In essence, ASRF models simplify the many forces that may affect a pool of exposures by assuming that there is only one ''risk factor'' that causes credit losses to be correlated across exposures. Alternatively, one can think of the single risk factor as a random variable encompassing the many possible states of economic activity—from very good to very bad. Under the ASRF assumptions, CVaR for a portfolio is equal to the portfolio's expected credit losses over the modeling horizon given a very bad state of the economy. (The pattern of losses that result when the risk factor takes on a specific value is also known as the conditional loss distribution.) The SFA calculates the capital necessary to cover credit losses over a one-year horizon when the risk factor is at the 99.9th percentile i.e., when economic conditions are as bad as the worst year in 1000 years. This is consistent with the approach applied throughout Basel II and the manner in which K_{IRB} is calculated.

The techniques commonly used to estimate the potential loss experience in ASRF models depend on the relationship between the risk factor and credit losses. In some cases, it is necessary to simulate the pattern of potential losses that can result when the risk factor takes on high value—also known as Monte Carlo simulation. Monte Carlo techniques, while commonly used, require significant computing resources. In other cases, it may be possible to characterize this pattern of losses with an appropriate functional form. In language that is slightly more rigorous, it is possible to approximate the conditional loss distribution. Gordy and Jones (2003) undertook the task of specifying this ''reasonable functional form,'' which became the basis for the supervisory formula.[32]

Most of the expressions that comprise the supervisory formula arise due to the effort to describe the shape of the conditional loss function. Expressions (3) through (9), discussed below, are used to parameterize K[Y].

$$(3)\quad h = \left(1 - \frac{K_{IRB}}{EWALGD}\right)^{N}$$

Note that

$$\frac{K_{IRB}}{EWALGD}$$

is the probability of default for one exposure in the pool when the risk factor is at the 99.9th percentile. Therefore,

$$1 - \frac{K_{IRB}}{EWALGD}$$

is the conditional probability that the exposure performs. Assuming that the exposures are conditionally independent, multiplying the probability of performance together N times (the effective number of exposures) yields the cumulative conditional probability that every exposure performs, or h.

a and b are defined entirely in terms of g and c, defined below. They are used to simplify the notation of the Beta distribution.

$$(4)\quad a = g \cdot c$$

$$(5)\quad b = g \cdot (1 - c)$$

c is the approximation of the mean parameter for the ''fitting function'' and is given by:

$$(6)\quad c = \frac{K_{IRB}}{1 - h}$$

The ''fitting function'' approximates the pool's conditional loss distribution. This approximation is necessary to avoid using simulation or numerical methods to solve for K[Y] as previously mentioned. However, note that h (the cumulative conditional probability that every exposure performs) is likely to be small in most cases. Consequently, C will be approximately equal to K_{IRB} under normal circumstances.

g is the precision parameter for the fitting function and is determined by c, f and v. This term arises from the processes through which Gordy and Jones approximate the conditional loss distribution.

$$(7)\quad g = \frac{(1 - c) \cdot c}{f} - 1$$

f is an approximation of the variance of the fitting function:

$$(8)\quad f = \frac{v + K_{IRB}^{\ 2}}{1 - h} - c^2 + \frac{(1 - K_{IRB}) \cdot K_{IRB} - v}{(1 - h) \cdot 1000}$$

Each securitization has rules governing how payments are disbursed to the tranches, often called the cash flow ''waterfall.'' These rules can be quite complex and the supervisory formula must handle the spectrum of different arrangements. In the model, the waterfall is represented by the tranche structure with the most junior tranche suffering losses up to its entire position before more senior tranches are affected. This simplification, while useful for modeling purposes, may not accurately describe the structure of a specific securitization.

v is the variance of the conditional loss distribution:

$$(9)\quad v = K_{IRB} \cdot \frac{(EWALGD - K_{IRB}) + .25 \cdot (1 - EWALGD)}{N}$$

[32] For those familiar with calculus, Gordy and Jones approximate the marginal amount of credit risk associated with an arbitrarily small slice of a tranche. From this, it is possible to calculate the risk-based capital requirements by integrating an appropriately parameterized approximation, which behaves similarly to a cumulative density function. Note that since integration yields the capital requirement for exposure up to and including the tranche of interest, it is necessary to subtract any subordinate exposures' capital requirements.

In the portion of expression (1) related to the supervisory add-on the terms are included to prevent exploitation of inadequacies in the model's stylized representation of a securitization. The add-on applies primarily to positions with credit enhancement just above K_{IRB} and its quantitative effect diminishes rapidly the farther Y is from K_{IRB}. Returning to expression (1) we can extract the supervisory add-on portion:

$$K_{IRB} - K[K_{IRB}] + \frac{d \cdot K_{IRB}}{20}\left(1 - e^{\frac{20 \cdot (K_{IRB} - Y)}{K_{IRB}}}\right)$$

where

$$(10) \quad d = 1 - (1 - h) \cdot (1 - \beta[K_{IRB}; a, b])$$

Notice that expressions (3) through (10) do not change for a given securitization. In other words, since these expression do not contain information which is tranche-specific, the results from expressions (3) through (10) can be used when calculating S[Y] for any tranche of a given securitization if $Y > K_{IRB}$.

Example 1: Comprehensive SFA Calculation

Because of the complexities associated with applying the SFA, a comprehensive example has been developed to aid in application.

Transaction Summary

A six-tranche, privately placed securitization with 10 underlying wholesale exposures will be used to illustrate the basic application of the SFA. Since none of the six tranches are externally rated, and the securitization does not meet the definition of an ABCP conduit, neither the RBA nor the IAA is applicable.

Table 1 below identifies the characteristics of the ten underlying exposures in the securitized pool.

TABLE 1.—UNDERLYING WHOLESALE EXPOSURE CHARACTERISTICS

Exposure	Principal balance (EAD)	PD (percent)	LGD (percent)	EL percent	Maturity (M)	IRB capital charge
#1	$5.00	0.75	35.0	0.26	5	$0.35
#2	5.00	0.75	35.0	0.26	5	0.35
#3	5.00	0.75	35.0	0.26	5	0.35
#4	5.00	0.75	35.0	0.26	5	0.35
#5	15.00	0.50	25.0	0.13	2	0.43
#6	20.00	1.25	55.0	0.69	10	2.59
#7	30.00	1.25	55.0	0.69	10	3.87
#8	5.00	0.75	35.0	0.26	5	0.35
#9	5.00	0.75	35.0	0.26	5	0.35
#10	5.00	0.75	35.0	0.26	5	0.35
Pool	100.00	0.96	43.5	0.46	4.55	9.34

Calculation of Bank-Supplied Inputs

In order to utilize the SFA, banks must supply seven inputs. Based upon the previously provided information regarding the securitization's structure and underlying collateral characteristics, each of the seven bank-supplied inputs can be calculated.

N is the exposure-weighted number of exposures in the pool. In the stylized example, the wholesale securitization has 10 actual exposures; however, the effective number of exposures is much less than 10 because three larger exposures dominate the pool. To illustrate numerically:

$$N = \frac{(5+5+5+5+5+5+5+15+20+30)^2}{(5^2+5^2+5^2+5^2+5^2+5^2+5^2+15^2+20^2+30^2)} = \frac{10{,}000}{1{,}700} = 5.88$$

EWALGD is the exposure-weighted average loss given default for the underlying exposures. To illustrate numerically for our stylized example:

$$EWALGD = \frac{((7 \cdot (\$5 \cdot 35\%)) + (\$15 \cdot 25\%) + (\$20 \cdot 55\%) + (\$30 \cdot 55\%))}{(7 \cdot \$5) + \$15 + \$20 + \$30} = \frac{\$43.5}{\$100} = 43.5\%$$

By utilizing the exposure-weighted average expected loss (0.46%) and the sum of the individual exposures' IRB capital requirements ($9.34, calculated using the wholesale IRB risk-weight function) K_{IRB} can be determined:

$$K_{IRB} = \frac{\$9.34 + \$100 \cdot 0.46\%}{\$100} = 9.80\%$$

UE is equivalent to the sum of the underlying exposures in the pool, or $100 in this case.

TP is set to 100 percent in our example, primarily so that the aggregate capital requirement for the entire securitization, as well as individual charges for each tranche, can be illustrated.

T represents a tranche's thickness or its size relative to the underlying securitized exposures, while L represents the credit enhancement level of the subject tranche. All things being equal, a thicker tranche will generate a higher SFA capital requirement in dollar terms relative to a thinner tranche. Further, a tranche with a higher credit enhancement level, all things being equal, will generate a lower SFA capital requirement than one with a lower credit enhancement level.

The tranches, in order of seniority from most senior to most junior, have notional values of $60, $15, $10, $8, $5 and $2, which we designate Tranche A through Tranche F, respectively. Table 2 below depicts the calculation of L and T for each tranche of the securitization.

Table 2: Calculation of L and T

Description	Notional Amount	Credit Enhancement Level (L)	Thickness (T)	$L + T$
Tranche A	$ 60.00	$\frac{2+5+8+10+15}{100} = 40\%$	$\frac{60}{100} = 60\%$	100%
Tranche B	$ 15.00	$\frac{2+5+8+10}{100} = 25\%$	$\frac{15}{100} = 15\%$	40%
Tranche C	$ 10.00	$\frac{2+5+8}{100} = 15\%$	$\frac{10}{100} = 10\%$	25%
Tranche D	$ 8.00	$\frac{2+5}{100} = 7\%$	$\frac{8}{100} = 8\%$	15%
Tranche E	$ 5.00	$\frac{2}{100} = 2\%$	$\frac{5}{100} = 5\%$	7%
Tranche F	$ 2.00	$\frac{0}{100} = 0\%$	$\frac{2}{100} = 2\%$	2%

Calculating the Risk-Based Capital Requirement for Tranches A through F

Using the seven bank-supplied inputs determined above, the SFA capital requirement can be calculated for each tranche of the securitization. The calculations for each tranche of the sample securitization are illustrated below. The calculations are categorized in three separate groups to display the idiosyncrasies of the SFA: (1) The tranches below K_{IRB} (E and F), (2) the tranche straddling K_{IRB} (D), and (3) the tranches above K_{IRB} (A through C).

Group 1: Tranches Below the K_{IRB} Boundary

The methodology for determining the capital requirements for Tranches E and F are equivalent since both L + T and L are below K_{IRB}. Two important results are apparent when using the SFA for tranches below K_{IRB}. First, the capital requirement for each tranche (E and F) is dollar-for-dollar. Put slightly differently, tranches of securitized exposures that absorb losses below K_{IRB} are subject to dollar-for-dollar capital requirements. Second, when L + T < K_{IRB}, no additional information beyond UE, TP, L and T is required to determine the SFA capital requirement. Since Tranches E and F are subject to dollar-for-dollar (100 percent) charges, they clearly exceed the 56 basis point floor. The capital requirement calculations for Tranches E and F are displayed below to reinforce this concept:

Tranche E: UE · TP · ((L + T) − L) = $100 · 100% · ((2% + 5%) − 2%) = $5

Tranche F: UE · TP · ((L + T) − L) = $100 · 100% · ((0% + 2%) − 0%) = $2

Group 2: Tranche Straddling the K_{IRB} Boundary

Tranche D straddles K_{IRB} since L + T > K_{IRB} (15% > 9.80%) and L < K_{IRB}, (7% < 9.80%). Since L + T > K_{IRB}, the bank would have to calculate equations (3) through (10) to determine S[L + T]. As noted previously, only UE, TP and L are necessary to determine S[L] since L < K_{IRB}. As noted in the ''Mechanics of the SFA'' section of this guidance, equations (3) through (10) do not change

for a given securitization. The calculations for equations (3) through (10) for the sample securitization are included below:

$$(3)\ h = \left(1 - \frac{K_{IRB}}{\text{EWALGD}}\right)^{N} = \left(1 - \frac{9.80\%}{43.5\%}\right)^{5.88} = (0.774713)^{5.88} = 22.29\%$$

$$(4)\ c = \frac{K_{IRB}}{1-h} = \left(\frac{9.80\%}{1-22.29\%}\right) = .1261$$

$$(5)\ v = K_{IRB} \cdot \frac{(EWALGD - K_{IRB}) + .25 \cdot (1 - EWALGD)}{N}$$
$$= 9.80\% \cdot \frac{(43.5\% - 9.80\%) + .25 \cdot (1 - 43.5\%)}{5.88} = .0080$$

$$(6)\ f = \frac{v + K_{IRB}^{2}}{1-h} - c^{2} + \frac{(1 - K_{IRB}) \cdot K_{IRB} - v}{(1-h) \cdot 1000}$$
$$= \frac{.0080 + (9.80\%)^{2}}{1 - 22.29\%} - (.1261)^{2} + \frac{(1 - 9.80\%) \cdot 9.80\% - .0080}{(1 - 22.29\%) \cdot 1000} = .0068$$

$$(7)\ g = \frac{(1-c) \cdot c}{f} - 1 = \frac{(1 - .1261) \cdot .1261}{.0068} - 1 = 15.18$$

$$(8)\ a = g \cdot c = 15.18 \cdot .1261 = 1.913$$

$$(9)\ b = g \cdot (1-c) = 15.18 \cdot (1 - .1261) = 13.26$$

$$(10)\ d = 1 - (1-h) \cdot (1 - \beta[K_{IRB}; a, b]) = 1 - (1 - 22.29\%) \cdot (1 - \beta[9.80\%; 1.913, 13.26])$$
$$= 1 - (77.71\%) \cdot (1 - .4402) = .5650$$

$$K[L+T] = (1-h) \cdot [(1 - \beta[L+T; a, b]) \cdot (L+T) + \beta[L+T; a+1, b] \cdot c]$$
$$K[15\%] = (1 - 22.29\%) \cdot [(1 - \beta[15\%; 1.913, 13.26]) \cdot 15\% + \beta[15\%; 2.913, 13.26] \cdot .1261]$$
$$= (77.71\%) \cdot [(1 - .6758) \cdot 15\% + .4269 \cdot .1261] = 7.96\%$$

Next, the supervisory add-on term can be calculated. First the value for $K[K_{IRB}]$ is calculated:

$$K[K_{IRB}] = (1-h) \cdot [(1 - \beta[K_{IRB}; a, b]) \cdot K_{IRB} + \beta[K_{IRB}; a+1, b] \cdot c]$$
$$= (1 - 22.29\%) \cdot [(1 - \beta[9.80\%; 1.913, 13.26]) \cdot 9.80\% + \beta[9.80\%; 2.913, 13.26] \cdot .1261]$$
$$= (77.71\%) \cdot [(1 - .4402) \cdot 9.80\% + .1979 \cdot .1261] = 6.20\%$$

$K[K_{IRB}]$ is then substituted into the full supervisory add-on term:

$$K_{IRB} - K[K_{IRB}] + \frac{d \cdot K_{IRB}}{20}\left(1 - e^{\frac{20 \cdot (K_{IRB} - [L+T])}{K_{IRB}}}\right)$$

$$= 9.80\% - 6.20\% + \frac{.5650 \cdot 9.80\%}{20}\left(1 - e^{\frac{20 \cdot (9.80\% - [15\%])}{9.80\%}}\right) = 3.87\%$$

Since S[L + T] is a combination of the model-based estimate of non-diversifiable credit risk (K[L + T]) and the supervisory add-on, S[L + T] can be determined as follows:

S[15%] = 7.96% + 3.87% = 11.83%

Since L < K_{IRB}, can easily be determined in the same fashion used for Tranches E and F. S[L + T] − S[L] = 11.83% − 7% = 4.83%. Since 4.83 percent exceeds the 56 basis point floor (.56% · 8% = .45%), the SFA capital requirement for Tranche D is: Tranche D: UE · TP · (S[L + T] − S[L]) = $100 · 100% · (4.83%) = $4.83

Group 3: Tranches Above the K_{IRB} Boundary

Tranches A through C all lie above the K_{IRB} boundary. The calculations for each of these tranches are given below. Again, the prior calculations for equations (3) through (10) can be used for Tranches A through C since these values are the same for every tranche of a securitization. Further simplifying the task, S[L] equals S[L + T] for the tranche immediately junior.

Tranche A

$$K[100\%] = (1 - 22.29\%) \cdot [(1 - \beta[100\%; 1.913, 13.26]) \cdot 100\% + \beta[100\%; 2.913, 13.26] \cdot .1261]$$
$$= (77.71\%) \cdot [(1 - 1) \cdot 100\% + 1 \cdot .1261] = 9.80\%$$

$$S[100\%] = 9.80\% + 9.80\% - .0620 + \frac{.5650 \cdot 9.80\%}{20} \cdot \left(1 - e^{\frac{20 \cdot (9.80\% - 100\%)}{9.80\%}}\right) = 13.67\%$$

$$K[40\%] = (1 - 22.29\%) \cdot [(1 - \beta[40\%; 1.913, 13.26]) \cdot 40\% + \beta[40\%; 2.913, 13.26] \cdot .1261]$$
$$= (77.71\%) \cdot [(1 - .9937) \cdot 40\% + .9776 \cdot .1261] = 9.77\%$$

$$S[40\%] = 9.77\% + 9.80\% - .0620 + \frac{.5650 \cdot 9.80\%}{20} \cdot \left(1 - e^{\frac{20 \cdot (9.80\% - 40\%)}{9.80\%}}\right) = 13.65\%$$

$$S[100\%] - S[40\%] = 13.67\% - 13.65\% = .02\%$$

Tranche B

$$S[40\%] = 13.65\%$$

$$K[25\%] = (1 - 22.29\%) \cdot [(1 - \beta[25\%; 1.913, 13.26]) \cdot 25\% + \beta[25\%; 2.913, 13.26] \cdot .1261]$$
$$= (77.71\%) \cdot [(1 - .9137) \cdot 25\% + .7879 \cdot .1261] = 9.39\%$$

$$S[25\%] = 9.39\% + 9.80\% - .0620 + \frac{.5650 \cdot 9.80\%}{20} \cdot \left(1 - e^{\frac{20 \cdot (9.80\% - 25\%)}{9.80\%}}\right) = 13.27\%$$

$$S[40\%] - S[25\%] = 13.65\% - 13.27\% = 0.38\%$$

Tranche C

$$S[25\%] = 13.27\%$$

$$S[15\%] = 11.83\%$$

$$S[25\%] - S[15\%] = 13.27\% - 11.83\% = 1.44\%$$

The next step is verifying whether any of the above capital calculations for tranches A, B, or C violate the 56 basis point supervisory floor. In dollar terms, the above formulas produce capital requirements for these tranches equal to $0.02, $0.38, and $1.44, respectively, while the corresponding floors are $0.34 (=.56% · $60), $.08 (=.56% · $15), and $0.06 (=.56% · $10). Thus, the floor is binding only for tranche A, whose capital charge is increased to $0.34. The SFA capital requirement for each tranche is presented below:

Tranche A: UE · TP · (.0056 · T) = $100 · 100% · .34% = $0.34

Tranche B: UE · TP · (S[40%] − S[25%]) = $100 · 100% · .38% = $0.38

Tranche C: UE · TP · (S[25%] − S[15%]) = $100 · 100% · 1.44 = $1.44

Summary

Table 3 below summarizes the SFA-produced capital requirements for each tranche of the securitization:

TABLE 3.—SFA CAPITAL REQUIREMENTS FOR EXAMPLE 1

Tranche	Tranche amount	SFA capital requirement
A	$60	$0.34
B	15	0.38
C	10	1.44
D	8	4.83
E	5	5.00
F	2	2.00
Total	100	13.98

The 56 basis point floor, supervisory add-on, and below K_{IRB} deduction requirements can result, as in the case of this example, with the aggregate capital requirement for a bank exceeding the implied capital requirement for the underling exposures. For this reason, the total capital that an entity must hold is capped at the level implied by K_{IRB} (UE · TP · K_{IRB} also referred to as the K_{IRB} cap). Whether this bank is subject to the cap depends on which tranches the bank retains. For example, if the bank sold all but Tranches E and F, the K_{IRB} cap would not apply since the aggregate capital requirement ($7) would be less than the charge implied by K_{IRB} ($9.80). However, if the bank retained Tranche D in addition to Tranches E and F, then the aggregate SFA capital requirement ($11.83) would exceed the K_{IRB} cap and the risk-based capital requirement would be capped at $9.80.

Example 2: Sale of a Pool of Mortgages With Partial Recourse

Transaction Summary

A bank sells a high-quality mortgage loan pool of $100. As a condition of the sale, the bank agrees to cover the first $10 of losses on mortgages. The bank correctly applies GAAP accounting and removes the sold loans from its books, while establishing a $0.40 recourse liability reserve (valuation allowance) for the estimated fair market value of the recourse liability. Note that this is a specific reserve, not a general reserve. The characteristics of the sold mortgage loan pool are noted below:

TABLE 4.—UNDERLYING MORTGAGE LOAN POOL CHARACTERISTICS

Exposure	Principal balance (EAD)	PD	LGD	EL	IRB capital requirement	K_{IRB}
Retail	$ 100.00	0.50%	10.0%	0.05%	$ 0.62	0.67%

The transaction noted above is an example of tranched cover. In this case, the bank has agreed to absorb the first $10 of losses, which results in the selling bank retaining a disproportionate risk position in the transaction. As a result of this contractual sales agreement, two distinct credit risk positions are created: (1) A $90 senior position and (2) a $10 junior position. Since neither position carries an external rating, the SFA is the appropriate method with which to determine the capital requirement, provided the seller and the purchaser are eligible to use it.

Calculation of Bank-Supplied Inputs

Table 5 below shows the values for L and T. Because this is a retail securitization, h and v can be set to zero. We continue to assume that TP = 100%.

Table 5: Calculation of L and T

Description	Notional Amount	Credit Enhancement Level (L)	Thickness (T)	$L + T$
Tranche 1	$ 90.00	$\frac{10}{100} = 10\%$	$\frac{90}{100} = 90\%$	100%
Tranche 2	$ 10.00	$\frac{0}{100} = 0\%$	$\frac{10}{100} = 10\%$	10%

Calculation of the SFA Capital Requirement for Tranche 1 and 2

Table 6: Calculation of Pool Specific and Tranche Specific Values

Pool Specific Calculations		Tranche Specific Calculations		
h	0		Tranche 1	Tranche 2
c	0.0067	$K[L+T]$	0.67%	0.67%
v	0	$S[L+T]$	0.79%	0.79%
f	0.0000067	$K[L]$	0.67%	0.00%
g	999	$S[L]$	0.79%	0.00%
a	6.6933	$S[L+T]-S[L]$	0.00%	0.79%
b	992.307			
d	0.55092			
$K[K_{IRB}]$	.57%			

In the case of Tranche 1, S[L + T] − S[L] <.0056 · T = .0056 · 90% = 0.50% and is subject to the supervisory floor. Using this and values from Table 6 above, the SFA capital requirement for Tranches 1 and 2 can be determined as follows:

Tranche 1: UE · TP · (.0056 · T) = $100 · 100% · (.50%) = $.50

Tranche 2: UE · TP · (S[L + T] − S[L]) = $100 · 100% · (.79%) = $.79

Notice that the capital requirement for Tranche 2 exceeds the K_{IRB} cap (UE · TP · K_{IRB} = $100 · 100% · (.67%) = $.67) and is reduced to $.67.

Summary

Table 7 below summarizes the SFA capital requirement for each tranche of the securitization. Note, in this example, the originating bank established a $.40 recourse reserve liability with a charge through earnings. However, while such reserves can be used to offset deductions from capital required under the Securitization Framework, they cannot be used to offset a position's risk-based capital requirement. Thus, the risk-based capital requirement for Tranche 2 is not reduced by the valuation allowance and remains $0.67.

Another interesting feature of this example is that because the investing bank holds Tranche 1 and the originating bank holds Tranche 2, the SFA produces an aggregate capital requirement for the entire transaction ($1.17) that is well above the K_{IRB} cap ($0.67). The capital required in excess of the K_{IRB} cap is the result of the 56 basis point floor capital requirement assessed against Tranche 1. Without the floor, Tranche 1 would not receive a capital requirement. The investing bank is assessed a capital requirement even though the originating bank is subject to the K_{IRB} cap. If the investing bank could not calculate K_{IRB} because the bank cannot compute the risk-based capital requirement for all underlying exposures, the entire $90 position would be deducted from capital.

TABLE 7.—SFA CAPITAL REQUIREMENTS FOR EXAMPLE 2

Tranche	Tranche amount	SFA capital requirement
1	$90	$0.50
2	10	0.67
Total ...	100	1.17

Example 3: Collateralized Loan Obligation—SFA and RBA Interaction

Transaction Summary

This example represents a typical cash-funded collateralized loan obligation using corporate loans. The example assumes that the originating bank retains an unrated residual exposure to Class E and that investing banks acquire the externally rated tranches.

Since the Class E exposure is unrated and is not an ABCP exposure, the originating bank can use the SFA provided it is eligible and can calculate

all the necessary inputs. Table 8 below identifies the characteristics of the aggregated underlying exposures in the securitized pool. We assume for simplicity that the effective number of exposures (N) is set to 100 and TP to 100 percent.

TABLE 8.—UNDERLYING LOAN POOL CHARACTERISTICS

Exposure	Principal balance (EAD)	EL	IRB capital requirement	K_{IRB}
Wholesale	$ 100.00	1.32%	$ 7.32	8.64%

Calculation of Bank-Supplied Inputs

Table 9 below identifies the other inputs necessary for the originating bank to calculate the SFA for Tranche E (e.g. L and T) and the external ratings necessary for the investing banks to apply the RBA.

Table 9: Calculation of L and T

Description	External Rating	Notional Amount	Credit Enhancement Level (L)	Thickness (T)	$L + T$
Tranche A	"AAA"	$ 67.50	$\frac{7.5+8+5+12}{100}=32.5\%$	$\frac{67.5}{100}=67.5\%$	100%
Tranche B	"AA"	$ 7.50	$\frac{8+5+12}{100}=25\%$	$\frac{7.5}{100}=7.5\%$	32.5%
Tranche C	"A"	$ 8.00	$\frac{5+12}{100}=17\%$	$\frac{8}{100}=8\%$	25%
Tranche D	"BBB"	$ 5.00	$\frac{12}{100}=12\%$	$\frac{5}{100}=5\%$	17%
Tranche E	NR	$ 12.00	$\frac{0}{100}=0\%$	$\frac{12}{100}=12\%$	12%

Originating Bank Capital Calculation

Table 10 below provides the various calculations necessary for the originating bank to apply the SFA to Tranche E.

Table 10: Calculation of Pool Specific and Tranche Specific Values

Pool Specific Calculations		Tranche Specific Calculations	
h	0.00%		Tranche E
c	0.0864	$K[L+T]$	8.58%
v	0.0003	$S[L+T]$	9.59%
f	0.0004	$K[L]$	0.00%
g	205.65	$S[L]$	0.00%
a	17.77	$S[L+T]-S[L]$	9.59%
b	187.88		
d	0.5273		
$K[K_{IRB}]$	7.86%		

Using values from Table 10 above, the SFA capital requirement can be determined as follows:

Tranche E: UE · TP · (S[L + T] − S[L]) =$100 · $100% · (9.59%) = $9.59

Again we have a case where the capital requirement for Tranche E exceeds the K_{IRB} cap (UE · TP · K_{IRB} = $100 · $100% ·8.64% = $8.64) and is reduced accordingly.

Investing Bank Capital Calculation:

For an investing bank, Table 11 below illustrates the amount of required capital for each of the rated tranches after applying the RBA. The relevant RBA risk weights in this example depend not only on the external rating, but also on the tranche's seniority.

TABLE 11.—RBA RISK WEIGHTS APPLICABLE TO RATED TRANCHES

Tranche	Rating	Exposure	RBA risk weights (percent)	Required capital	Capital as % of exposure
A	"AAA"	$ 67.50	7	$0.38	0.56
B	"AA"	7.50	15	0.09	1.20
C	"A"	8.00	20	0.13	1.60
D	"BBB"	5.00	75	$0.30	6.00

Comparison of RBA and SFA Generated Capital Requirements

TABLE 12.—RBA AND SFA CAPITAL REQUIREMENTS FOR EXAMPLE 3

Tranche	Tranche amount	SFA capital requirement
A	$ 67.50	$ 0.38
B	7.50	0.09
C	8.00	0.13
D	5.00	0.30
E	12.00	8.64
Total	100.00	9.54

If the other classes of notes were held by the originating bank, the RBA would be used to determine required capital since all of these classes are rated. Notably, regardless of how many classes are held in addition to Class E, the total amount of capital that the originating bank must hold for the transaction will not exceed the K_{IRB} cap ($8.64).

Appendix B: Examples of Data Elements for Securitization Exposures

For illustrative purposes, this appendix provides examples of the kinds of data elements banks should collect under an IRB data management framework for securitization exposures.

For All Securitization Exposures

- The description and amount of each exposure;
- The fundamental characteristics of the exposure (e.g., tenor, fixed or variable rates, call, and early amortization features);
- The exposure's initial rating and effective date;
- The amount of any exposures deducted from risk-based capital under provisions of the framework;
- A description and amount of exposure limits at the aggregate and transaction level;
- A description and amount of concentration limits, for the underlying exposure level and capital;
- The person who authorizes limit and concentration levels, and his or her authority levels; and
- Reports of all policy exceptions.

For Exposures Subject to the Ratings-Based Approach

- The NRSRO providing the rating;
- Documentation indicating that the exposure is part of the surveillance/monitoring program, is publicly published, and is in transition matrices;
- A description and amount of any rated security supporting an inferred rating;
- Seniority and granularity (for non-retail securitizations) of the exposure;
- Whether the NRSRO rating is a short-term or long-term credit assessment;
- The risk-weight schedule used, and the risk-weight column applied; and
- The date, magnitude, and details of any rating changes.

For Exposures Subject to the Internal Assessment Approach

- The name of the sourced NRSRO, and the rating criteria for the referenced asset class;
- The criteria used for selecting the NRSRO;
- NRSRO stress loss factors used for each ICA;
- Historical loss and dilution estimates used in applying NRSRO criteria;
- Seller-servicer rating assignment, if any;
- Any quantitative adjustments to ratings criteria, stress loss factors, or loss estimates based upon qualitative judgments (e.g., seller-servicer strength, concentration, etc.);
- The external rating for the commercial paper issued by the ABCP program (that is supported by the exposure);
- Seniority and granularity of the exposure;
- Whether the ICA is a short-term or long-term credit assessment;
- The risk-weight schedule used, and the risk-weight column applied;
- The person or model responsible for assigning the rating;
- Any overrides to the rating and the authorizing official (if applicable); and
- The date, magnitude, and details of any rating changes.

For Exposures Subject to the Supervisory Formula Approach

- The dollar amount of underlying exposures in the transaction (UE);
- The securitization exposure's proportion of the tranche (TP);
- The risk-based capital requirements of the underlying exposures as if they were held on the bank's balance sheet (K_{IRB});
- The exposure's credit enhancement level (L);
- The exposure tranche's thickness (T);
- The securitization transaction's effective number of underlying exposures (N); and
- The transaction's exposure-weighted loss-given-default (EWALGD).

For Securitization Transactions With Early-Amortization Provisions (On a Monthly Basis)

- The total amount of the sold (investor's interest) and retained positions in the securitization transaction;
- The IRB risk-based capital requirements of the underlying exposures as if they were held on the originating bank's balance sheet;
- The excess spread-capture schedule for the transaction (or earliest spread capture requirement when multiple series are issued from a trust);
- The three-month average excess spread for the transaction (or the lowest three-month average within the trust);
- The designation of whether the amortization provision is ''controlled'' or ''non-controlled''; and
- The credit-conversion factor schedule (controlled or non-controlled) applied to the exposure, and the row and column applied.

Attachment A—The NPR Qualification Requirements Related to the IRB Framework

Part III. Qualification

Section 22. Qualification Requirements [33]

(a) *Process and systems requirements.* (1) A [bank] [34] must have a rigorous process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital.

(2) The systems and processes used by a [bank] for risk-based capital purposes under this appendix must be consistent with the [bank]'s internal risk management processes and management information reporting systems.

(3) Each [bank] must have an appropriate infrastructure with risk measurement and management processes that meet the qualification requirements of this section and are appropriate given the [bank]'s size and level of complexity. Regardless of whether the systems and models that generate the risk parameters necessary for calculating a [bank]'s risk-based capital requirements are located at any affiliate of the [bank], the [bank] itself must ensure that the risk parameters and reference data used to determine its risk-based capital requirements are representative of its own credit risk and operational risk exposures.

(b) *Risk rating and segmentation systems for wholesale and retail exposures.* (1) A [bank] must have an internal risk rating and segmentation system that accurately and reliably differentiates among degrees of credit risk for the [bank]'s wholesale and retail exposures.

(2) For wholesale exposures, a [bank] must have an internal risk rating system that accurately and reliably assigns each obligor to a single rating grade (reflecting the obligor's likelihood of default). The [bank]'s wholesale obligor rating system must have at least seven discrete rating grades for non-defaulted obligors and at least one rating grade for defaulted obligors. Unless the [bank] has chosen to directly assign ELGD and LGD estimates to each wholesale exposure, the [bank] must have an internal risk rating system that accurately and reliably assigns each wholesale exposure to loss severity rating grades (reflecting the [bank]'s estimate of the ELGD and LGD of the exposure). A [bank] employing loss severity rating grades must have a sufficiently granular loss severity grading system to avoid grouping together exposures with widely ranging ELGDs or LGDs.

(3) For retail exposures, a [bank] must have a system that groups exposures into segments with homogeneous risk characteristics and assigns accurate and reliable PD, ELGD, and LGD estimates for each segment on a consistent basis. The [bank]'s system must group retail exposures into the appropriate retail exposure subcategory and must group the retail exposures in each retail exposure subcategory into separate segments. The [bank]'s system must identify all defaulted retail exposures and group them in segments by subcategories separate from non-defaulted retail exposures.

(4) The [bank]'s internal risk rating policy for wholesale exposures must describe the [bank]'s rating philosophy (that is, must describe how wholesale obligor rating assignments are affected by the [bank]'s choice of the range of economic, business, and industry conditions that are considered in the obligor rating process).

(5) The [bank]'s internal risk rating system for wholesale exposures must provide for the review and update (as appropriate) of each obligor rating and (if applicable) each loss severity rating whenever the [bank] receives new material information, but no less frequently than annually. The [bank]'s retail exposure segmentation system must provide for the review and update (as appropriate) of assignments of retail exposures to segments whenever the [bank] receives new material information, but no less frequently than quarterly.

(c) *Quantification of risk parameters for wholesale and retail exposures.* (1) The [bank] must have a comprehensive risk parameter quantification process that produces accurate, timely, and reliable estimates of the risk parameters for the [bank]'s wholesale and retail exposures.

(2) Data used to estimate the risk parameters must be relevant to the [bank]'s actual wholesale and retail

[33] 71 FR 55922 through 55924 (Sept. 25, 2006).

[34] For simplicity, and unless otherwise noted, the NPR uses the term [bank] to include banks, savings associations, and bank holding companies. [AGENCY] refers to the primary Federal supervisor of the bank applying the rules.

exposures, and of sufficient quality to support the determination of risk-based capital requirements for the exposures.

(3) The [bank]'s risk parameter quantification process must produce conservative risk parameter estimates where the [bank] has limited relevant data, and any adjustments that are part of the quantification process must not result in a pattern of bias toward lower risk parameter estimates.

(4) PD estimates for wholesale and retail exposures must be based on at least 5 years of default data. ELGD and LGD estimates for wholesale exposures must be based on at least 7 years of loss severity data, and ELGD and LGD estimates for retail exposures must be based on at least 5 years of loss severity data. EAD estimates for wholesale exposures must be based on at least 7 years of exposure amount data, and EAD estimates for retail exposures must be based on at least 5 years of exposure amount data.

(5) Default, loss severity, and exposure amount data must include periods of economic downturn conditions, or the [bank] must adjust its estimates of risk parameters to compensate for the lack of data from periods of economic downturn conditions.

(6) The [bank]'s PD, ELGD, LGD, and EAD estimates must be based on the definition of default in this appendix.

(7) The [bank] must review and update (as appropriate) its risk parameters and its risk parameter quantification process at least annually.

(8) The [bank] must at least annually conduct a comprehensive review and analysis of reference data to determine relevance of reference data to [bank] exposures, quality of reference data to support PD, ELGD, LGD, and EAD estimates, and consistency of reference data to the definition of default contained in this appendix.

(d) *Counterparty credit risk model.* A [bank] must obtain the prior written approval of [AGENCY] under section 32 to use the internal models methodology for counterparty credit risk.

(e) *Double default treatment.* A [bank] must obtain the prior written approval of [AGENCY] under section 34 to use the double default treatment.

(f) *Securitization exposures.* A [bank] must obtain the prior written approval of [AGENCY] under section 44 to use the internal assessment approach for securitization exposures to ABCP programs.

(g) *Equity exposures model.* A [bank] must obtain the prior written approval of [AGENCY] under section 53 to use the internal models approach for equity exposures.

—Text omitted—

(i) *Data management and maintenance.* (1) A [bank] must have data management and maintenance systems that adequately support all aspects of its advanced systems and the timely and accurate reporting of risk-based capital requirements.

(2) A [bank] must retain data using an electronic format that allows timely retrieval of data for analysis, validation, reporting, and disclosure purposes.

(3) A [bank] must retain sufficient data elements related to key risk drivers to permit adequate monitoring, validation, and refinement of its advanced systems.

(j) *Control, oversight, and validation mechanisms.* (1) The [bank]'s senior management must ensure that all components of the [bank]'s advanced systems function effectively and comply with the qualification requirements in this section.

(2) The [bank]'s board of directors (or a designated committee of the board) must at least annually evaluate the effectiveness of, and approve, the [bank]'s advanced systems.

(3) A [bank] must have an effective system of controls and oversight that:

(i) Ensures ongoing compliance with the qualification requirements in this section;

(ii) Maintains the integrity, reliability, and accuracy of the [bank]'s advanced systems; and

(iii) Includes adequate governance and project management processes.

(4) The [bank] must validate, on an ongoing basis, its advanced systems. The [bank]'s validation process must be independent of the advanced systems'' development, implementation, and operation, or the validation process must be subjected to an independent review of its adequacy and effectiveness. Validation must include:

(i) The evaluation of the conceptual soundness of (including developmental evidence supporting) the advanced systems;

(ii) An on-going monitoring process that includes verification of processes and benchmarking; and

(iii) An outcomes analysis process that includes back-testing.

(5) The [bank] must have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the [bank]'s advanced systems and reports its findings to the [bank]'s board of directors (or a committee thereof).

(6) The [bank] must periodically stress test its advanced systems. The stress testing must include a consideration of how economic cycles, especially downturns, affect risk-based capital requirements (including migration across rating grades and segments and the credit risk mitigation benefits of double default treatment).

(k) *Documentation.* The [bank] must adequately document all material aspects of its advanced systems

Attachment B—Supervisory Standards

Chapter 1: Advanced Systems for Credit Risk

S 1–1 An IRB system must have five interdependent components that enable an accurate measurement of credit risk and risk-based capital requirements.

S 1–2 Senior management must ensure that all of the components of the bank's advanced systems for credit risk function effectively and comply with the qualification requirements in the NPR.

S 1–3 The board of directors or its designated committee must at least annually evaluate the effectiveness of, and approve, the bank's advanced systems.

S 1–4 Each bank (including each depository institution) must ensure that the risk parameters and reference data used to determine its risk-based capital requirements are representative of its own credit risk.

S 1–5 Banks should establish specific accountability for the overall performance of their advanced systems for credit risk.

S 1–6 A bank's advanced systems should be transparent.

Chapter 2: Wholesale Risk Rating Systems

S 2–1 Banks must identify obligor defaults in accordance with the IRB definition of default.

S 2–2 Banks should demonstrate that their wholesale risk rating processes are sufficiently independent to produce objective ratings.

S 2–3 IRB risk rating systems must have two dimensions obligor default and loss severity corresponding to PD (obligor default), and ELGD and LGD (loss severity).

S 2–4 Banks must assign discrete obligor rating grades.

S 2–5 The obligor rating system must rank obligors by likelihood of default.

S 2–6 Banks must assign an obligor to only one rating grade.

S 2–7 A bank's rating policy must describe its ratings philosophy and how quickly obligors are expected to migrate from one rating grade to another in response to economic cycles.

S 2–8 In assigning an obligor to a rating grade, a bank should assess the risk of obligor default over a period of

at least one year taking into account the possibility of adverse economic conditions.

S 2–9 Banks must have at least seven discrete obligor rating grades for non-defaulted obligors and at least one rating grade for defaulted obligors.

S 2–10 Banks should justify the number of obligor rating grades used in its risk rating system and the distribution of obligors across those grades.

S 2–11 Banks may recognize implied support as a rating criterion subject to specific supervisory considerations; however, banks should not rely upon the possibility of U.S. government financial assistance, except for the financial assistance that the U.S. government has legally committed to provide.

S 2–12 Banks must have a loss severity rating system that is able to assign loss severity estimates (ELGD and LGD) to each wholesale exposure.

S 2–13 Banks should have empirical support for their loss severity rating system and the rating system should be capable of supporting the quantification of ELGD estimates (and LGD estimates if approved for internal estimates).

S 2–14 Banks must have a sufficiently granular loss severity rating system to group exposures with similar estimated loss severities or a process that assigns estimated ELGDs and LGDs to individual exposures.

S 2–15 Rating criteria should be written, clear, consistently applied, and include the specific qualitative and quantitative factors used in assigning ratings.

S 2–16 Risk ratings must be updated whenever new material information is received, but in no instance less than annually.

Chapter 3: Retail Segmentation Systems

S 3–1 Banks must use the IRB definition of default when identifying defaulted retail exposures.

S 3–2 Banks must first place exposures into one of the three retail exposure subcategories (residential mortgage, QRE, and other retail). Banks must then separate exposures into segments with homogeneous risk characteristics.

S 3–3 A retail segmentation system must produce segments that accurately and reliably differentiate risk and produce accurate and reliable estimates of the risk parameters.

S 3–4 Banks should clearly define and document the criteria for assigning an exposure to a particular retail segment.

S 3–5 Banks should develop and document their policies to ensure that risk-driver information is sufficiently accurate and timely to track changes in underlying credit quality and that the updated information is used to assign exposures to appropriate segments.

S 3–6 The bank's retail exposure segmentation system must provide for the review and update (as appropriate) of assignments of retail exposures to segments whenever the bank receives new material information, but no less frequently than quarterly.

Chapter 4: Quantification

S 4–1 Banks should have a fully specified process covering all aspects of quantification (reference data, estimation, mapping, and application). The quantification process should be fully documented.

S 4–2 Risk parameter estimates must be based on the IRB definition of default. At least annually, a bank must conduct a comprehensive review and analysis of reference data to determine the relevance of reference data to the bank's exposures, quality of reference data to support risk parameter estimates, and consistency of reference data to the IRB definition of default.

S 4–3 Banks must separately quantify wholesale risk parameter estimates before adjusting the estimates for the impact of eligible guarantees and eligible credit derivatives.

S 4–4 Banks may take into account the risk-reducing effects of guarantees in support of retail exposures when quantifying the PD, ELGD, and LGD of the segment.

S 4–5 Banks may only reflect the risk-reducing benefits of tranched guarantees of multiple retail exposures by meeting the definition and operational criteria for synthetic securitizations.

S 4–6 At a minimum, the quantification process and the resulting risk parameters must be reviewed annually and updated as appropriate.

S 4–7 Quantification should be based upon the best available data for the accurate estimation of the risk parameters.

S 4–8 The sample period for the reference data must meet the minimum length for each risk parameter by portfolio.

S 4–9 The reference data must include periods of economic downturn conditions, or the parameter estimates must be adjusted to compensate for the lack of data from such periods.

S 4–10 Banks should clearly document how they adjust for the absence of significant data elements in either the reference data set or the existing portfolio.

S 4–11 Judgmental adjustments to risk parameter estimates, either upward or downward, may be an appropriate part of the quantification process, but must not result in an overall bias toward lower risk parameter estimates.

S 4–12 Risk parameter estimates should incorporate a degree of conservatism that is appropriate for the overall rigor of the quantification process.

S 4–13 Mapping should be based on a comparison of available data elements that are common to the existing portfolio and each reference data set.

S 4–14 A mapping process should be established for each reference data set and for each estimation model.

S 4–15 Banks that combine estimates from internal and external data or that use multiple estimation methods should have a clear policy governing the combination process and should examine the sensitivity of the results to alternative combinations.

S 4–16 The aggregation of risk parameter estimates from individual exposures within rating grades or segments should be governed by a clear and well-documented policy.

S 4–17 PD estimates must be empirically based and must represent a long-run average.

S 4–18 Effects of seasoning, when material, must be considered in the PD estimates for retail portfolios.

S 4–19 ELGD and LGD estimates must be empirically based and must reflect the concept of ''economic loss.''

S 4–20 ELGD estimates must reflect the expected default-weighted average economic loss rate over a mix of economic conditions, including economic downturn conditions.

S 4–21 LGD estimates must reflect expected loss severities for exposures that default during economic downturn conditions, and must be greater than or equal to ELGD estimates.

S 4–22 A bank may use internal estimates of LGD only if supervisors have previously determined that the bank has a rigorous and well-documented process for assessing the effects of economic downturn conditions on loss severities and for producing LGD estimates consistent with downturn conditions. The process must appropriately identify downturn conditions, identify the impact of economic downturn conditions on loss rates, identify any material adverse correlations between drivers of default and LGD, and incorporate any identified correlations and/or downturn impact into the quantification of LGD.

S 4–23 Estimates of additional drawdowns must reflect net additional draws expected during economic downturn periods.

S 4–24 Estimates of additional drawdowns prior to default for individual wholesale exposures or retail segments must not be negative.

S 4–25 Quantification of the risk parameters should appropriately recognize the risk characteristics of exposures that were removed from reference data sets through loan sales or securitizations.

Chapter 5: Wholesale Credit Risk Protection

S 5–1 Risk-based capital benefits are only recognized for credit protection that transfers credit risk to third parties.

S 5–2 Banks must ensure that credit protection for which risk-based capital benefits are claimed represents unconditional and legally binding commitments to pay on the part of the guarantors or counterparties.

Chapter 6: Data Management and Maintenance

S 6–1 Banks must collect and maintain sufficient data to support their IRB systems.

S 6–2 For wholesale exposures, banks must collect, maintain, and analyze essential data for obligors and exposures. This should be done throughout the life and disposition of the credit exposure.

S 6–3 Banks must capture and maintain all significant factors used to assign obligor and loss severity ratings.

S 6–2 For retail exposures, banks must collect and maintain all essential data elements used in segmentation systems and the quantification process. The data must cover a period of at least five years and must include a period of economic downturn conditions, or the bank must adjust its estimates of risk parameters to compensate for the lack of data from periods of economic downturn conditions.

S 6–5 Banks should ensure that outsourced activities performed by third parties are supported by sufficient data to meet IRB requirements.

S 6–6 Banks should maintain data to allow for a thorough review of asset sale transactions.

S 6–7 Banks should develop policies and controls around the integrity of the data maintained both internally and through third parties.

S 6–8 Banks should document the process for delivering, retaining, and updating inputs to the data warehouse and ensuring data integrity.

S 6–9 Banks must maintain detailed documentation of changes to the data elements supporting the IRB system.

S 6–10 Banks must retain data using an electronic format that allows timely retrieval of data for analysis, validation, reporting, and disclosure purposes.

Chapter 7: Controls and Validation

S 7–1 Banks must have an effective system of controls that ensures ongoing compliance with the qualification requirements, maintains the integrity, reliability, and accuracy of the IRB system, and includes adequate governance and project management processes.

S 7–2 Control processes should be independent and transparent to supervisors and auditors.

S 7–3 The annual assessment of the IRB system presented to the board of directors should be supported by the bank's comprehensive and independent reviews of the IRB system.

S 7–4 Validation activities must be conducted independently of the advanced systems' development, implementation, and operation, or subjected to an independent assessment of their adequacy and effectiveness.

S 7–5 The systems and processes used by a bank for risk-based capital purposes must be consistent with the bank's internal risk management processes and management information reporting systems.

S 7–6 Internal audit must, at least annually, assess the effectiveness of the controls supporting the IRB system and report its findings to the board of directors (or a committee thereof).

S 7–7 A bank's validation policy should cover the key aspects of risk rating and segmentation systems and the quantification process.

S 7–8 Validation must assess the accuracy of the risk rating and segmentation systems and the quantification process.

S 7–9 Validation processes for risk rating and segmentation systems, and the quantification process must include the evaluation of conceptual soundness, ongoing monitoring, and outcomes analysis.

S 7–10 Banks must evaluate the developmental evidence supporting the risk rating and segmentation systems and the quantification process.

S 7–11 Banks must conduct ongoing process verification of the risk rating and segmentation systems and the quantification process to ensure proper implementation and operation.

S 7–12 Banks must benchmark their risk rating and segmentation systems, and their risk parameter estimates.

S 7–13 Banks must analyze outcomes and must develop statistical methods to backtest their risk rating and segmentation systems and the quantification process.

S 7–14 Banks should establish ranges around the estimated values of risk parameter estimates and model results in which actual outcomes are expected to fall and have a validation policy that requires them to assess the reasons for differences and that outlines the timing and type of remedial actions taken when results fall outside expected ranges.

S 7–15 Each of the three activities in the validation process should be conducted often enough to ensure the ongoing integrity, reliability, and accuracy of the IRB risk rating and segmentation systems, and the quantification process.

S 7–16 Developmental evidence must be updated whenever significant changes in methodology, data, or implementation occur. Other validation activities must be ongoing and must not be limited to a point in time.

Chapter 8: Stress Testing of Risk-Based Capital Requirements

S 8–1 Banks must conduct and document stress testing of their advanced systems as part of managing risk-based capital.

Chapter 9: Counterparty Credit Risk Exposure

S 9–1 All transactions with a counterparty subject to a qualifying master netting agreement constitute a netting set and may be treated as a single exposure, otherwise each transaction shall have its risk-based capital requirement calculated on a standalone basis.

S 9–2 Banks should have an appropriately documented process for determining whether transactions are eligible for an EAD adjustment approach if they choose to use an EAD adjustment approach.

S 9–3 Banks must use the same method for determining risk-based capital requirements for all similar transactions.

S 9–4 The method for calculating EAD for transactions subject to counterparty credit risk should be appropriate for the risk, extent, and complexity of the bank's activity.

S 9–5 Banks that use the VaR model approach for single product netting sets of repo-style transactions or eligible margin loans must conduct rigorous and regular backtesting to validate its model.

S 9–6 Banks must meet certain qualifying criteria that consist of operational requirements, modeling standards, and model validation requirements before receiving their primary Federal supervisor's approval to use the internal models method.

S 9–7 Banks that use the internal models methodology for counterparty credit risk transactions must establish initial model validation and ongoing model review procedures. The model

review should consider whether the inputs and risk factors as well as the model outputs are appropriate. The review of outputs should include a backtesting regime that compares the model's output with realized exposures.

Chapter 10: Risk-Weighted Assets for Equity Exposures

S 10–1 Banks must apply the same methodology to like instruments.

S 10–2 If a bank chooses to use an internal model, it must produce reliable estimates of the potential loss in the bank's portfolio from equity holdings under stress market conditions.

S 10–3 Banks must validate internal models used for equity exposures.

S 10–4 Internal models used to calculate risk-based capital requirements for equity exposures must be consistent with models used in the bank's risk management processes and management information reporting systems.

Chapter 11: Securitizations

S 11–1 Banks must use the securitization framework for any exposures that involve the tranching of credit risk (with the exception of a tranched guarantee that applies only to an individual retail exposure).

S 11–2 Banks should develop written implementation policies and procedures describing the allowed approaches, methods of application, and designated responsibilities for complying with the securitization framework.

S 11–3 Securitization transactions must transfer credit risk to at least one third party to qualify for treatment under the securitization framework.

S 11–4 Banks that provide implicit support to securitization transactions must hold risk-based capital as if the underlying assets had not been securitized, and must deduct from Tier 1 capital any after-tax gain-on-sale resulting from the securitization.

S 11–5 A clean-up call constitutes implicit support if, in exercising the call, the bank provides support in excess of its contractual obligation to provide support to the securitization.

S 11–6 The maximum risk-based capital requirement for all securitization exposures held by a bank associated with a single securitization transaction is the amount of risk-based capital plus expected losses that would have been required had the underlying exposures not been securitized.

S 11–7 Banks must follow the specified hierarchy of approaches to determine risk-weighted asset amounts for all securitization exposures.

S 11–8 In order to use the RBA, the securitization exposure must be externally rated by an NRSRO, or be eligible for an inferred rating.

S 11–9 The securitization transaction must have an external rating assigned by an NRSRO that fully reflects the credit risk associated with timely repayment of principal and interest.

S 11–10 Banks should document the factors that support their use of the RBA.

S 11–11 Banks' internal credit assessment processes should be comprehensive, transparent, independent, well-defined, and fully documented.

S 11–12 Banks should analyze the servicer's capabilities and document the analysis in the internal assessment.

S 11–13 The bank must validate its ICA process on an ongoing basis and at least annually the ICA process and results must be subject to the full range of the bank's IRB validation activities.

S 11–14 Banks should document the securitization structure and loss prioritization.

S 11–15 Banks should retain the specific data elements necessary to calculate the appropriate securitization risk-based capital requirement.

Attachment C—Acronym List

Acronym	Definition
ABCP	Asset-backed commercial paper.
ABS	Asset-backed security.
AIR	Accrued interest receivable.
ALLL	Allowance for loan and lease losses.
ANPR	Advance notice of proposed rulemaking.
AR	Accounts receivable.
ARM	Adjustable rate mortgage.
ASRF	Asymptotic single risk factor model.
CCR	Counterparty Credit Risk.
CF	Credit conversion factor.
CDO	Collateralized debt obligations.
CE	Credit enhancement.
CEIO	Credit-enhancing Interest-Only.
CFR	Code of Federal Regulations.
CRM	Credit risk mitigation.
CUSIP	Committee on Uniform Securities Identification Procedures.
CVA	Credit valuation adjustment.
CVaR	Credit value-at-risk.
EAD	Exposure at default.
EBITDA	Earnings before interest, taxes, depreciation and amortization.
EE	Expected exposure.
EPE	Expected positive exposure.
EL	Expected loss.
ELGD	Expected loss given default.
EWALGD	Exposure-weighted average loss given default.
FASB	Financial Accounting Standards Board.
FHLB	Federal Home Loan Bank.
FIN	Financial Accounting Standards Board interpretation number.
FTSE	Financial Times Securities Exchange.
GAAP	Generally accepted accounting principles.
GDP	Gross domestic product.
GSE	Government sponsored enterprise.
HVCRE	High-volatility commercial real estate.
IAA	Internal assessment approach.
ICA	Internal credit assessment.
ID	Identification.
IMA	Internal models approach.
IRB	Internal ratings-based.
K_{IRB}	Capital requirement for underlying pool of exposures (securitizations).
L	Credit enhancement level for the tranche of interest.
LEQ	Loan equivalent exposure.
LF	Liquidity facility.
LGD	Loss given default.
LTV	Loan-to-value ratio.
M	Effective maturity.
MBS	Mortgage-backed security.
MSA	Metropolitan statistical area.
N	Effective number of underlying exposures.
NPR	Noticed of proposed rulemaking.
NRSRO	Nationally recognized statistical rating organization.
NSF	Nonsufficient funds.
OTC	Over-the-counter.
PD	Probability of default.
PE	Peak exposure.
PFE	Potential future exposure.
PMI	Private mortgage insurance.
QRE	Qualifying revolving exposure.
RBA	Ratings-based approach.
RE	Real estate.
RWA	Risk-weighted assets.
S&P	Standard and Poors.
SBIC	Small business investment company.
SFA	Supervisory formula approach.
SPE	Special purpose entity.
T	Thickness of the tranche of interest.
TFR	Thrift financial report.
TP	Percentage of the tranche of interest the bank owns.
UE	Underlying exposure.
ULBII	Unexpected losses from counterparty credit risk based on the Basel II capital requirement with an alpha of 1.0.
ULCCR	Unexpected losses from counterparty credit risk at a one year 99.9% confidence level based on banks internal models.
USC	U.S. Code.
VaR	Value-at-risk.

Proposed Supervisory Guidance on Advanced Measurement Approaches for Operational Risk

Table of Contents

I. Introduction
A. Purpose
B. Qualification Requirements, Supervisory Standards, and Operational Risk AMA Systems
C. Supervisory Objectives and Approach
II. Definitions
III. Operational Risk Management
A. Governance
B. Board of Directors and Management Oversight
C. Firm-Wide Operational Risk Management Function
D. Line of Business Management
E. Reporting
IV. Operational Risk Data and Assessment
A. Capture and Maintenance of Elements
B. Internal Operational Loss Event Data
C. External Operational Loss Event Data
D. Scenario Analysis
E. Business Environment and Internal Control Factors
V. Operational Risk Quantification
A. Analytical Framework
B. Eligible Operational Risk Offsets
C. Unit of Measure
D. Accounting for Dependence
E. Risk Mitigation
F. Alternative Approaches for Depository Institutions
G. Documentation of Operational Risk Quantification Systems
VI. Data Management and Maintenance
VII. Verification and Validation
VIII. Appendices
A. The NPR Qualification Requirements, Risk-Weighted Assets for Operational Risk, and Disclosure Requirements
B. Supervisory Standards
C. The NPR Qualification Process
D. Basel II Operational Risk Information Collection Templates
E. Operational Loss Event Types and Examples

I. Introduction

A. Purpose

This document sets forth the supervisory guidance of the federal banking agencies [1] (''Agencies'') for U.S. banks, savings associations, and bank holding companies (''banks'') that use Advanced Measurement Approaches (AMA) for calculating the risk-based capital requirement for operational risk under the Basel II capital regulation. The primary Federal supervisor will review a bank's AMA System relative to relevant regulatory requirements and this guidance to determine whether the bank may use Basel II-based rules to determine its risk-based capital requirements. Banks will have considerable flexibility in developing operational risk management, data and assessment, and quantification processes that are appropriate for the nature of their activities, business environment, and internal controls.

This guidance should be considered with the related notice of proposed rulemaking (NPR), published in the **Federal Register** on September 25, 2006.[2] The NPR proposes the AMA regulatory framework and the AMA qualification requirements for banks that are required to operate, or seek to operate, under that framework. This supervisory guidance provides additional detail regarding supervisory standards for operational risk management, data and assessment, and quantification processes that will help a bank comply with the qualification requirements in the NPR.

B. Qualification Requirements, Supervisory Standards, and Operational Risk AMA Systems

Although operational risk is not a new risk, deregulation and globalization of financial services, together with the growing sophistication of financial technology, and new business activities and delivery channels are making banks' operational risk profiles (i.e., the level of operational risk across banks' activities and risk categories) more complex. As such, banks and supervisors are increasingly viewing operational risk management as a distinct risk discipline. The NPR and this guidance outline a more disciplined approach to operational risk management and measurement.

The NPR establishes the qualification requirements that a bank must meet in order to use advanced systems for calculating its risk-based capital requirement. The NPR qualification requirements for banks using an AMA System to calculate the operational risk component of the bank's risk-based capital requirement are listed in Appendix A.[3] This guidance identifies supervisory standards (''S'') that a bank should follow to implement and maintain an AMA System for regulatory capital purposes. Banks meeting these standards should be well positioned to demonstrate that their AMA System meets the qualification requirements of the NPR. The relevant supervisory standards are listed at the beginning of each major section of the guidance, with a full compilation of the standards provided in Appendix B. The standards establish broad regulatory guidelines, while providing each bank the ability to uniquely tailor the framework to its organizational structure and culture. This guidance should not be interpreted as weakening or superseding the safety and soundness principles articulated in existing statutes, or in the regulations or guidance issued by the Agencies.

The standards are organized into five major groupings: Operational risk management; operational risk data and assessment; operational risk quantification; data management and maintenance; and verification and validation. Operational risk management includes standards for the governance and organizational structures (including reporting) needed to manage operational risk. Operational risk data and assessment establishes the standards for a consistent and comprehensive capture of the four elements of the AMA.[4] Operational risk quantification encompasses the standards governing the systems and processes that quantify a bank's operational risk exposure. The sections addressing data management and maintenance, and verification and validation, establish standards to help ensure that a bank's AMA System remains robust and relevant as its operational risk profile changes over time. The objectives of the standards are to help ensure rigor, integrity, and transparency for each bank's AMA System and the resulting operational risk component of the bank's risk-based capital requirement.

A bank's AMA System should provide for the consistent application of operational risk policies and procedures throughout the bank, and address the roles of both the independent firm-wide operational risk management function and the lines of business. A sound AMA System will identify operational risk losses, calculate operational risk exposures and associated operational risk regulatory capital, promote risk management processes and procedures to mitigate or control operational risks, and help ensure that management is fully aware of emerging operational risk issues. This framework should also provide for the consistent and comprehensive capture and assessment of data elements needed to identify, measure, monitor, and control the bank's operational risk exposure. This includes identifying the nature, type(s), and underlying cause(s) of the operational loss event(s). Moreover, the

[1] The Federal banking agencies are: the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

[2] 71 FR 55830 (Sept. 25, 2006).

[3] This guidance does not include all of the qualifying criteria contained in the NPR.

[4] The four elements of the AMA include internal operational loss event data, external operational loss event data, scenario analysis, and business environment and internal control factors. See Section IV for a detailed discussion of the supervisory standards for each element.

framework must also include independent verification and validation to assess the effectiveness of the controls supporting the bank's AMA System, including compliance with policies, processes, and procedures. Given the importance of these functions, the Agencies believe that a bank's validation and verification functions should begin their work soon after the bank has started to implement its AMA System.

In practice, a bank's operational risk AMA System should reflect the scope and complexity of the business lines, as well as the corporate organizational structure. Each bank's operational risk profile is unique and requires a tailored risk management approach, appropriate for the scale and materiality of the risks present, and the size of the bank. There is no single framework that suits every bank; the Agencies expect that different banks will develop and implement unique risk management, data and assessment, and quantification systems, consistent with their culture and risk profile.

C. Supervisory Objectives and Approach

The supervisory standards in this document apply to banks subject to the Basel II regulation. However, the Agencies will not simply evaluate a bank's qualification using each of the individual supervisory standards. Supervisors will also assess how well the various components of a bank's AMA System complement and reinforce one another to achieve the overall objectives of effective management and measurement of operational risk.

In performing their evaluation, the Agencies will exercise supervisory judgment in evaluating both the individual components and the overall AMA System. The NPR provides that the primary Federal supervisor may require a bank to assign a different risk-weighted asset amount for operational risk, to change aspects of its operational risk analytical framework (for example, distributional or dependence assumptions), or to make other changes to the bank's operational risk management processes, data and assessment systems, or quantification systems if the supervisor determines that the risk-weighted asset amount for operational risk produced by the bank is not commensurate with the bank's operational risk profile. The primary Federal supervisor may exercise this authority, for example, if it has identified significant changes or weakness within operational risk management processes that have not been appropriately captured in the bank's AMA System.

A bank's AMA System will be assessed as part of the ongoing supervision process. Some elements of sound operational risk management (for example, internal controls and information technology) have long been subject to examination by supervisors. Where practical, supervisors will make every effort to leverage these examination activities to assess the effectiveness of AMA processes. Substantive weaknesses or changes in a bank's operational risk profile identified in an examination or through other supervisory activities will be factored into the AMA qualification process.[5]

A part of the supervisory review will include an assessment of the bank's implementation plan.[6] The implementation plan must address how the bank complies or plans to comply with the AMA qualification requirements. The plan must also address the qualifying standards for the bank and each consolidated subsidiary (U.S. and foreign-based). A comprehensive and sound planning and governance process to oversee the implementation efforts must also be maintained. For a complete description of the NPR's qualification process, please see Appendix C.

II. Definitions

There are important definitions relevant to an AMA System for the purposes of the Agencies' risk-based capital requirements. They are:

- *Advanced Measurement Approach (AMA) System* means a bank's advanced operational risk management processes, operational risk data and assessment systems, and operational risk quantification systems.
- *Backtesting* means the comparison of a bank's internal estimates with actual outcomes during a sample period not used in model development. In this context, backtesting is one form of out-of-sample testing.
- *Benchmarking* means the comparison of a bank's internal estimates with relevant internal and external data sources or estimation techniques.
- *Business environment and internal control factors* means the indicators of a bank's operational risk profile that reflect a current and forward-looking assessment of the bank's underlying business risk factors and internal control environment.
- *Dependence* means a measure of the association among operational losses across and within business lines and operational loss event types.
- *Eligible operational risk offsets* means amounts, not to exceed expected operational loss, that:

(1) Are generated by internal business practices to absorb highly predictable and reasonably stable operational losses, including reserves calculated consistent with GAAP; and

(2) Are available to cover expected operational losses with a high degree of certainty over a one-year horizon.

- *Expected operational loss (EOL)* means the expected value (mean) of the distribution of potential aggregate operational losses, as generated by the bank's operational risk quantification system using a one-year horizon.
- *External operational loss event data,* with respect to a bank, means gross operational loss amounts, dates, recoveries, and relevant causal information for operational loss events occurring at organizations other than the bank.
- *GAAP* means U.S. generally accepted accounting principles.
- *Internal operational loss event data,* with respect to a bank, means gross operational loss amounts, dates, recoveries, and relevant causal information for operational loss events occurring at the bank.
- *Operational loss* means a loss (excluding insurance or tax effects) resulting from an operational loss event. Operational loss includes all expenses associated with an operational loss event except for opportunity costs, forgone revenue, and costs related to risk management and control enhancements implemented to prevent future operational losses.
- *Operational loss event* means an event that results in loss and is associated with internal fraud; external fraud;[7] employment practices and

[5] For example, mergers and acquisitions potentially change the operational risk profile of the bank, pose challenges in integrating operational risk management, data and assessment, and quantification processes of the affected banks, and consequently raise supervisory issues regarding a bank's AMA System. The Agencies will assess the effects of mergers and acquisitions as a part of the ongoing supervision of operational risk management.

[6] A bank that becomes subject to the requirements of the rule must adopt a written implementation plan no later than six months after the later of the effective date of the final rule or the date the bank meets one of the applicability criterion of the rule. A bank that chooses to be subject to the requirements of the final rule must adopt a written implementation plan and notify its primary Federal supervisor in writing of its intent at least twelve months before it proposes to be subject to the first floor period.

[7] Retail credit card losses arising from non-contractual, third-party initiated fraud (for example, identity theft) are to be treated as external fraud operational losses. All other third-party initiated losses are to be treated as credit losses—see discussion under Standard 17 for more details.

workplace safety; clients, products, and business practices; damage to physical assets; business disruption and system failures; or execution, delivery, and process management (see Appendix D for examples of loss event types).

• *Operational risk* means the risk of loss resulting from inadequate or failed internal processes, people, and systems or from external events (including legal risk, but excluding strategic and reputational risk).

• *Operational risk exposure* means the 99.9th percentile of the distribution of potential aggregate operational losses, as generated by the bank's operational risk quantification system using a one-year horizon (and not incorporating eligible operational risk offsets or qualifying operational risk mitigants).

• *Parallel run period* means a period of at least four consecutive quarters after adoption of the bank's implementation plan before the bank's first floor period during which the bank complies with all the qualification requirements to the satisfaction of the bank's primary Federal supervisor.

• *Scenario analysis* means a systematic process of obtaining expert opinions from business managers and risk management experts to derive reasoned assessments of the likelihood and loss impact of plausible high-severity operational losses.

• *Total risk-weighted assets* means:

(1) The sum of:

(i) Credit risk-weighted assets; and

(ii) Risk-weighted assets for operational risk; minus

(2) The sum of:

(i) Excess eligible credit reserves not included in Tier 2 capital; and

(ii) Allocated transfer risk reserves.

• *Unexpected operational loss (UOL)* means the difference between the bank's operational risk exposure and the bank's expected operational loss.

• *Unit of measure* means the level (for example, organizational unit or operational loss event type) at which the bank's operational risk quantification system generates a separate distribution of potential operational losses.

III. Operational Risk Management

A. Governance

S 1. The bank's AMA System must include an operational risk management function and audit function that are independent of business line management. The operational risk management function should address operational risk on a firm-wide basis.

The organizational structure that supports a bank's AMA System may vary across banks, but should reflect the scale and complexity of the bank's operational risk profile. However, within all AMA banks, there are three key components that should be evident: The firm-wide operational risk management function, line of business management, and an independent audit function. These three areas should have functional independence,[8] but should work in cooperation to ensure that an effective AMA System is in place.

S 2. **The bank must have and document a process that clearly describes its AMA System, including how the bank identifies, measures, monitors, and controls operational risk.**

Management should maintain comprehensive documentation on operational risk management policies, processes, and procedures and communicate them to appropriate staff. The documentation should outline all aspects of the bank's AMA System, including the following:

• The roles and responsibilities of the board of directors,[9] the independent firm-wide operational risk management function, line of business management, and the independent verification and validation functions;

• A definition for operational risk that, at a minimum, encompasses the regulatory definition of operational risk, including the loss event types that will be monitored;

• The capture and use of internal and external operational risk loss event data, including clear documentation of which losses are used in and which are excluded from estimating the bank's operational risk exposure;

• The appropriate use of scenario analysis;

• The development and incorporation of business environment and internal control factor assessments, and risk mitigants;

• A description of the analytical framework that quantifies the operational risk exposure of the bank;

• How eligible operational risk offsets are determined, measured, and accounted for;

• A description of report content, distribution, and frequency for board of directors, line of business, and firm-wide reporting, including escalation of emerging issues and changing trends;

• A description of the verification and validation processes and procedures; and

• Descriptions of the review and approval process for significant policy and procedural changes and exceptions.

The bank's documentation should clearly differentiate the roles and responsibilities of the independent verification and validation functions. Activities to verify the bank's AMA System are typically included in the bank's internal or external audit programs. More specifically, independent verification includes the work done to test and verify the bank's AMA policies and procedures. Verification activities should be sufficiently broad to confirm that the bank's AMA System is working effectively and in a manner consistent with policies approved by the bank's board of directors. In addition, the verification function ensures that validation of AMA models was completed in accordance with the bank's validation policy. Validation includes processes the bank uses to test and assess the accuracy of models used to quantify the operational risk exposure and the operational risk component of the bank's risk-based capital requirement.

The documentation need not be contained in a single comprehensive document. Instead, banks may choose to develop and maintain an umbrella document that provides the board of directors with an overview of its AMA System, including how the framework allows for identifying, measuring, monitoring, and controlling operational risk. A bank should consider including the following in this overview document:

• Define the bank's philosophy and strategy for operational risk management and its risk tolerance;

• Define the roles and responsibilities of those involved in the development, implementation, and oversight of the bank's AMA System; and

• Reference additional detailed policies, processes, and procedures.

S 3. The bank must maintain effective internal controls supporting its AMA System.

As one of the foundations of safe and sound banking, sound internal controls are essential to a bank's management of operational risk and are an important requirement for AMA qualification. When properly designed and consistently enforced, a sound system of internal controls will help management safeguard the bank's resources, produce reliable financial reports, and comply with laws and regulations. Sound internal controls, assessed annually for

[8] For the purposes of this guidance, ''functional independence'' is the ability to carry out work freely and objectively and render impartial and unbiased judgments. Independence is often evidenced through separate reporting lines. Supervisory assessments of independence will rely upon guidelines contained in existing regulatory guidance (for example, audit, internal control systems, and board of directors/management).

[9] For the purposes of this guidance, the ''board of directors'' refers to either the full board or its designated board committee.

effectiveness by internal audit, should also reduce the possibility of significant human errors and irregularities in internal processes and systems, and should assist in their timely detection when they do occur. The audit function's annual assessment is not required to assess all operational risk controls, but the scope of the assessment should be sufficient to assess the effectiveness of the controls supporting the bank's AMA System (see Section VII).

The Agencies are not introducing new internal control standards, but rather emphasizing the importance of existing standards.[10] Internal control systems may differ among banks due to the nature and complexity of a bank's products and services, organizational structure, and risk management culture. The existing regulatory standards allow for these differences, while also establishing regulatory expectations for the scope and quality of the internal control structure.

The extent to which a bank maintains effective internal controls will be assessed through ongoing supervisory processes. As noted earlier, the Agencies will leverage existing examination processes to avoid duplication in assessing implementation of a bank's AMA System.

B. Board of Directors and Management Oversight

S 4. The bank must ensure that an effective framework is in place to identify, measure, monitor, and control operational risk, and to accurately compute the bank's operational risk component of the bank's risk-based capital requirement. The board of directors must at least annually evaluate the effectiveness of, and approve, the bank's AMA System, including the strength of the bank's control infrastructure.

S 5. The board of directors and management should ensure that the bank's operational risk management, data and assessment, and quantification processes are appropriately integrated into the bank's existing risk management and decision-making processes and that there are adequate resources to support these processes throughout the bank.

Strong board of directors and management oversight forms the cornerstone of an effective operational risk management process. The board of directors is responsible for overseeing the establishment and ongoing effectiveness of the AMA System. The board of directors must approve the bank's written implementation plan. In addition, the board of directors must at least annually evaluate the effectiveness of, and approve, the bank's AMA System. Information provided to the board of directors for this review should be detailed enough for the bank's board members to understand and evaluate its AMA System.[11] The board of directors' evaluation should reflect the results of any independent reviews and the findings of the verification and validation functions.[12]

Other board of directors' responsibilities with respect to operational risk may include:

- Understanding and approving the bank's tolerance for operational risk;[13]
- Ensuring appropriate management responsibility, accountability, and reporting;
- Understanding the major aspects of the bank's operational risk profile through the periodic review of high-level reports that address material risks, capital adequacy, and strategic implications for the bank;
- Ensuring that management demonstrates that it is actively using its AMA System as a basis for assessing and managing operational risk, and that the framework's use is not limited to determining regulatory capital;
- Ensuring that mechanisms exist to allow for the independent verification of the AMA System's implementation and validation activities;
- Ensuring that mechanisms exist to allow for the independent validation of the bank's risk measurement and quantification processes; and
- Ensuring Compliance with regulatory disclosure requirements.

The board of directors may delegate the responsibility and authority for the design and implementation of the AMA System to management. Management is responsible for translating the bank's AMA System into specific policies, processes, and procedures, implementing them across business lines, and ensuring independent verification and validation of the AMA System. Management is also responsible for communicating the policies, processes, and procedures throughout the bank to ensure consistent understanding and treatment of operational risk.

While each level of management is responsible for implementing the AMA System in their areas, senior management should clearly assign authority and responsibilities to business managers to encourage and maintain accountability. Moreover, senior management should ensure appropriate implementation of the AMA System within individual business lines.

Senior management is responsible for ensuring that operational risk is appropriately managed across the bank and that all components of the bank's AMA System function effectively and meet regulatory requirements. Specifically, management should ensure that the bank has qualified staff and sufficient resources to carry out the operational risk functions outlined in its AMA System. Appropriate staff and resources should be available within the lines of business, the firm-wide operational risk management function, and the verification and validation functions to monitor and enforce compliance with the bank's policies and procedures related to the AMA System.

Other management responsibilities include ensuring that:

- The bank's overall operational risk profile is monitored, maintained at prudent levels, and supported by adequate capital;
- Compensation policies are sufficiently flexible to attract and retain qualified and competent operational risk expertise; and
- Operational risk issues are communicated consistently to staff responsible for managing other risks (for example, credit, market, and liquidity risk), as well as staff responsible for purchasing insurance and overseeing third-party outsourcing arrangements.

C. Firm-Wide Operational Risk Management Function

S 6. The bank must have a firm-wide operational risk management function that oversees the AMA System and is independent of business line

[10] Each Agency has extensive guidance on corporate governance, internal controls, and risk monitoring and reporting in its respective examination policies and procedures. All Agencies have standards for safe and sound operations and for safeguarding customer information. In addition, there are a number of interagency standards that cover topics relevant to the internal control structure.

[11] Important sources of information about the effectiveness of the AMA System include: (1) Internal audit's annual review of the effectiveness of operational risk controls and the independent verification function's annual assessment of the adequacy of the overall operational risk framework, and (2) the results of the validation function's testing of model results and assessment of quantification processes—see Standards 3 and 32.

[12] See Section VII—Verification and Validation for more details regarding independent review requirements.

[13] Banks use several approaches to define operational risk tolerance, including establishing expectations for control self assessments, establishing targeted ceilings for operational losses, developing key risk indicators, or establishing other qualitative expectations for operational risk management. These approaches will continue to evolve and banks are encouraged to continue to develop effective metrics to define their operational risk tolerance.

management. The operational risk management function is also responsible for the development of operational risk data and assessment systems, operational risk quantification systems, and related processes throughout the bank.

S 7. The firm-wide operational risk management function should ensure adequate analysis and reporting of operational risk information. The function should also develop and report on the firm-wide operational risk profile.

The roles and responsibilities of the firm-wide operational risk management function may vary among banks, but should be clearly documented in operational risk policies and procedures. The firm-wide function should have organizational stature commensurate with the bank's operational risk profile. At a minimum, the function should ensure the development of policies, processes, and procedures that explicitly manage operational risk as a distinct risk.

Responsibilities of the firm-wide operational risk management function may include:

- Assisting in the implementation of the AMA System;
- Reviewing the bank's performance against stated operational risk objectives, goals, and risk tolerances;
- Periodically evaluating the effectiveness of the bank's AMA System;[14]
- Reviewing and analyzing operational loss event data and reports; and
- Ensuring appropriate reporting to senior management and the board of directors.

D. Line of Business Management

S 8. Line of business management is responsible for ensuring appropriate day-to-day management of the operational risks within its business unit.

S 9. Line of business management should ensure that internal controls and practices within its business unit are consistent with firm-wide policies, processes, and procedures.

Line of business management should ensure that business-specific policies, processes, and procedures are in place, and appropriate staff is available to manage operational risk associated with the products and activities offered. Implementation of the AMA System within each line of business should correspond to the scope of that business and its operational complexity and risk profile. Line of business operational risk reporting should be appropriate in frequency and scope to identify, measure, monitor, and control operational risk. Reporting should also address the condition of the internal control environment for a given line of business.

E. Reporting

S 10. The board of directors and senior management must receive reports on operational risk exposure, operational risk loss events, and other relevant operational risk information. The reports should include information regarding firm-wide and business line risk profiles, loss experience, and relevant business environment and internal control factor assessments. These reports should be received quarterly.

To facilitate monitoring of operational risk, results from the data and assessment, and quantification processes should be summarized and included in reports that can be used by different audiences to understand, manage, and control operational risk and losses. Reports generated by the bank's AMA System[15] should provide the foundation for reporting to the board of directors and senior management. Comprehensive management reporting, geared toward the firm-wide operational risk management function and line of business management, should include:

- Operational loss experience, including an overview and assessment of loss experience over time;
- Operational risk exposure;
- Changes in assessments of business environment and internal control factors;
- Changes in factors signaling an increased risk of future losses;
- Trend analysis, allowing line of business and independent firm-wide operational risk management to assess and manage operational risk exposures, systemic line of business risk issues, and other corporate risk issues;
- Policy and risk tolerance reporting; and
- Operational risk causal factors.

IV. Operational Risk Data and Assessment

The bank must have operational risk data and assessment systems that include credible, transparent, systematic, and verifiable processes that incorporate the following elements on an ongoing basis:

- Internal operational loss event data,
- Relevant external operational loss event data,
- Scenario analysis, and
- Assessments of the bank's business environment and internal control factors.

In addition, the operational risk data and assessment systems must be structured in a manner consistent with the bank's current business activities, risk profile, technological processes, and risk management processes. The operational risk data and assessment systems should provide for the consistent and comprehensive capture of the four elements needed to measure and verify the bank's operational risk exposure. The four elements should be combined in a manner that most effectively allows the bank to quantify its exposure to operational risk.

A. Capture and Maintenance of Elements

S 11. The bank must have a systematic process for incorporating internal loss event data, external loss event data, scenario analyses, and assessments of its business environment and internal controls factors to support both its operational risk management and measurement framework, as well as its calculation of the bank's operational risk component of its risk-based capital requirement.

S 12. The bank must use the regulatory definition of operational risk when assessing the operational risks to which the bank is exposed in order to calculate its risk-based capital requirement for operational risk. The bank should have clear standards for the collection and modification of all four elements in the operational risk data and assessment systems that support its AMA System.

The four required elements of a bank's data and assessment systems that support its AMA System aid the bank in identifying the level of and trends in operational risk, determining the effectiveness of risk management and control, highlighting opportunities to better mitigate operational risk, and assessing operational risk on a forward-looking basis. The bank should demonstrate that the four elements jointly cover all significant operational risks to which it is exposed. In the case

[14] The evaluation of a bank's operational risk framework may consider loss experience; effects of external market changes, other environmental factors, and the potential for new or changing operational risks associated with new products, activities or systems; and the framework's ability to detect or prevent potential operational losses. This evaluation process should include an assessment of leading industry practices.

[15] The firm-wide operational risk management function, lines of business, and the verification and validation functions should be generating reports for their unique needs. These reports should form the basis for aggregating reporting to senior management and the board of directors.

where the bank has sustained an operational loss event above its established threshold, but the loss is not yet included in the internal loss database, the bank should be able to demonstrate that the exposure is reasonably captured elsewhere, such as in one of its external loss observations or in one of its scenarios (see Standard 16 regarding the use of thresholds).

The bank should demonstrate that it has implemented its AMA System appropriately in all lines of business and corporate functions that could generate operational risk. For regulatory capital purposes, a bank must use the definition of operational risk that is provided in Section II—Definitions. A bank may use an expanded definition for risk management and measurement purposes, if it considers it more appropriate for risk management and measurement purposes.

As part of its AMA System implementation, a bank should demonstrate that it has established a consistent and comprehensive process for the capture and modification of all four required elements. While the primary Federal supervisor will review the quantification processes that combine these elements to determine the operational risk exposure, the supervisor must have the capacity to review the data collection process and the individual elements as well.

The bank should have a defined process that establishes responsibilities over the systems developed to capture and modify the AMA elements. In particular, the issue of modifying the data capture systems should be addressed in policies or procedures. System and process documentation should be maintained, with any modification tracked separately and reasons for the changes kept in the historical record. Such tracking allows management and supervisors to identify the nature and rationale of the modification. For example, the Agencies are particularly interested when a bank modifies its loss database by excluding a loss event from the quantitative measurement process. Management should have clear standards for addressing modifications and clearly delineate who has authority to override the data systems and under what circumstances. In addition, management should track override decisions.

B. Internal Operational Loss Event Data

S 13. The bank must have a historical observation period of at least five years for internal operational loss event data. A shorter period may be approved by the primary Federal supervisor to address transitional situations, such as integrating a new business line. Internal data should be captured across all business lines, corporate functions, events, product types, and geographic locations. The bank must have a systematic process for capturing and using internal operational loss event data in its operational risk data and assessment systems.

S 14. The bank should be able to map internal operational losses to the seven operational loss-event categories.

S 15. The bank should have a policy that identifies when an operational loss is recognized and should be added to the loss event database. The policy should provide for consistent treatment across the bank.

S 16. The bank may establish appropriate internal operational loss event data thresholds and, if so, must demonstrate the appropriateness of such thresholds.

S 17. The bank should have a clear policy that allows for the consistent treatment of loss event classifications (for example, credit, market, or operational loss events) across the organization.

Internal data with sufficient integrity is important in identifying the level of and trends in operational risk. A key to internal data integrity is the consistent and complete capture of loss event data across the bank. The bank must have a minimum historical observation period of five years of internal operational loss event data, or such shorter transitional period approved by the bank's primary Federal supervisor. For example, when a bank has recently acquired a firm that does not have comprehensive internal loss event data, the resulting bank should make use of both its internal loss data and the acquired firm's data to properly reflect the risks of the resulting institution. Depending on the quality of the data from the acquired firm, the resulting bank may have to place more weight on relevant external loss event data, results from scenario analysis, and factors reflecting assessments of the business environment and internal controls. Additionally, if a bank exits a business line and can clearly demonstrate that its exposure has been eliminated and that the loss experience does not have relevance to other remaining activities, the bank would likely be able to exclude that business unit's loss experience from subsequent quantification processes.

The bank should have a policy that identifies when an operational loss is recognized and should be added to the loss event database. Policies and procedures should be communicated to ensure there is satisfactory understanding of operational risk and the data capture requirements by appropriate staff. The independent firm-wide operational risk management function should ensure that the loss data are captured across all business lines, corporate functions, products types, event types, and from all geographic locations that could generate operational risk. The bank's operational loss policies and procedures should consider the effect and treatment of operational loss events that are recovered within a short period of time.

The bank's data and assessment system should have the ability to aggregate internal losses that are associated with the same loss event. This means the bank should be able to link operational loss events that cross multiple business lines or event types. Institutions should also maintain policies to ensure consistent identification and capture of multiple loss events that occur within one or several time periods, but that result from the same initial operational loss event. When capturing internal losses that span more than one business line, the bank may choose to assign the entire loss to one business line (for example, where the effect is the greatest, where the control breakdown occurred). Alternatively, the bank may choose to apportion the loss across several affected business lines. Regardless of how losses are assigned, the method should be well-reasoned and sufficiently documented. The treatment of related losses will also have an effect on dependence modeling, as discussed under Standard 28. If data are not captured across all business lines or from all geographic locations, the bank should document and explain the exceptions, including why the exceptions will not impair the bank's estimation of its operational risk exposure.

The description of the loss event, including causal factors, should be collected for internal operational loss events. Examples of additional loss event information to be collected include:

- Gross loss amount;
- Where the loss is reported and expensed;
- Loss event type category;
- Date of the loss;
- Discovery date of the loss;
- Event end date;
- Insurance recoveries;
- Other recoveries; and
- Adjustments to the loss estimate.

The level of detail describing the loss event and management action should be commensurate with the size of the gross loss amount. The bank may also choose to capture additional data that enhance

its operational risk management, data and assessment, and quantification processes. For example, it may be appropriate to capture data on ''near miss'' events, where no financial loss was incurred. While these near misses may not factor directly into the regulatory capital calculation, they may be useful to inform scenario analysis or for the operational risk management process.

For regulatory capital purposes, AMA banks should be able to map operational risk losses into the seven operational loss event categories defined in Section II. Banks will not be required to produce reports or perform analysis on the basis of the operational loss event categories for internal purposes, but should use the information to verify the comprehensiveness of the bank's data set.

The bank may refrain from collecting internal operational loss event data for individual operational losses below established thresholds, if the bank can demonstrate to its primary Federal supervisor that the thresholds are reasonable. There are a number of factors that a bank may use to establish the thresholds. Thresholds may be based on business lines, corporate functions, product types, geographic location, or other appropriate factors. The Agencies will allow flexibility in this area, provided the bank can demonstrate that the thresholds are reasonable, do not exclude important internal operational loss event data, and permit the bank to capture substantially all the dollar value of the bank's operational losses. A bank could demonstrate to its primary Federal supervisor that it has chosen appropriate thresholds by estimating the change in operational risk exposure as a result of using different thresholds.[16]

Banks may also find it useful to capture loss events in their operational risk databases that are treated as credit risk for regulatory capital purposes, but have an underlying element of operational risk. These types of events, while not incorporated into the regulatory capital calculation for operational risk, may have implications for operational risk management. For banks that capture loss events differently for regulatory capital and risk management purposes, bank management should demonstrate that (1) loss events are being captured consistently across the bank; (2) the data systems are sufficiently advanced to allow for this differential treatment of loss events; and (3) credit, market, and operational risk losses are being accounted for in the correct manner for regulatory capital purposes.

The agencies have established a boundary between credit and operational risks for regulatory capital purposes. Losses that arise from events associated with a credit arrangement with a borrower are credit losses with one proposed exception: Retail credit card fraud losses (for example, identity theft) are to be considered external fraud operational losses.

C. External Operational Loss Event Data

S 18. THE BANK MUST HAVE A SYSTEMATIC PROCESS FOR DETERMINING HOW EXTERNAL LOSS DATA WILL BE INCORPORATED INTO ITS OPERATIONAL RISK DATA AND ASSESSMENT SYSTEMS.

S 19. THE BANK SHOULD SYSTEMATICALLY REVIEW EXTERNAL DATA TO ENSURE AN UNDERSTANDING OF INDUSTRY OPERATIONAL LOSS EXPERIENCE.

External data may serve a number of different purposes in an AMA System. For example, where internal loss data are limited, external data may be a useful input in determining the bank's level of operational risk exposure. Even where external loss data are not an explicit input to a bank's database, such data may provide a means for the bank to understand industry experience and assess the adequacy of its internal data. External data may also prove useful to inform scenario analysis, provide additional data for severity distributions, or in model validation and out-of-sample testing.

The bank must establish a systematic process for determining the methodologies for incorporating external loss data into its operational risk data and assessment systems. To incorporate external loss data into a bank's framework, examples of the type of information a bank should collect include:

- Loss amount;
- Loss description; [17]
- Loss event type category;
- Loss event date;
- Adjustments to the loss amount (for example, recoveries and insurance settlements) to the extent that they are known; and
- Sufficient information about the reporting institution to facilitate comparison to its own organization.

Banks may obtain external loss data in any reasonable manner. For example, some banks are using data acquired through membership with industry consortia while other banks are using data obtained from vendor databases or public sources such as court records or media reports. In all cases, management should carefully evaluate the data source to ensure that the information being reported is relevant and accurate. The bank should document its process for and decisions regarding external data selection and scaling.

D. Scenario Analysis

S 20. The bank must have a systematic process for determining how scenario analysis will be incorporated into its operational risk data and assessment systems.

Scenario analysis allows the bank to incorporate forward-looking elements into its operational risk data and assessment systems. More specifically, scenario analysis is a systematic process of obtaining expert opinions from business and risk managers to derive reasoned assessments of the likelihood and loss impact of plausible high-severity operational losses that may occur at a bank. Scenario analysis is especially relevant for business lines or operational loss event types in which internal data, external data, or assessments of business environment and internal control factors do not provide a sufficiently robust estimate of the bank's exposure to operational risk. For example, a bank's scenario analysis should include consideration of high-severity loss events that occur infrequently in the industry. It could also include the effects of mergers or other significant organizational changes that may affect the nature of operational losses in the future. Business line and risk management experts' use of well-reasoned, external data may itself be a form of scenario analysis.

The bank must have a systematic process for determining the methodologies for incorporating scenario analysis into its operational risk data and assessment systems. The process should cover key elements of scenario analysis, such as the manner in which the scenarios are generated, the frequency with which they are updated, and the scope and coverage of operational loss events they are intended to reflect. The bank should document its process for conducting scenario analysis, as well as the results of the analysis.

E. Business Environment and Internal Control Factors

S 21. The bank must incorporate business environment and internal control factors into the bank's operational risk data and assessment systems.

[16] As discussed later in Standard 26, the choice of thresholds may affect the amount of EL offset that a bank can recognize.

[17] Loss descriptions should be included to the extent possible, but are not generally available from consortium data sources.

S 22. The bank must periodically compare the results of its business environment and internal control factor assessments against the bank's actual operational risk loss experience.

Business environment and internal control factors are indicators of the bank's operational risk profile that reflect the underlying business risk factors, an assessment of the current internal control environment, and a forward-looking assessment of the bank's control environment. The framework established to maintain the business environment and internal control factor assessments should be sufficiently flexible to encompass the range and complexity of actual and planned activities, changes in internal control systems, or an increased volume of information. In principle, a bank with strong internal controls in a stable business environment will have, all other things being equal, less exposure to operational risk than a bank with internal control weaknesses, that is experiencing rapid growth, or that is introducing new products. In this regard, banks should identify and assess the level of and trends in operational risk and related control structures across the organization. These assessments should be current and comprehensive across the bank, and should identify the critical operational risks facing the bank.

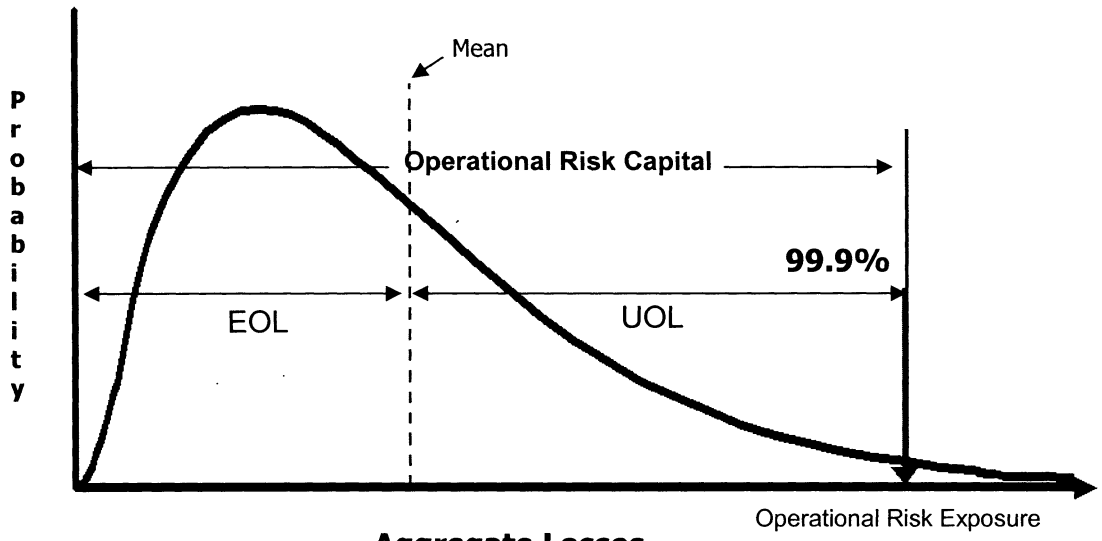
The business environment and internal control factor assessments should identify positive and negative trends in operational risk management within the bank. These assessments include reviewing both the control processes relating to current activities, as well as those relating to anticipated changes in a bank's business risk profile. Periodic comparisons must be made between the bank's actual operational loss exposure and the assessment results.

V. Operational Risk Quantification

A bank must have a comprehensive operational risk quantification system, using inputs from its data and assessment systems, that provides an estimate of the bank's operational risk exposure, which is defined as the 99.9th percentile of the distribution of potential aggregate operational losses over a one-year horizon. The bank's operational risk exposure is the starting point in determining the risk-based capital requirement for operational risk (see Graph 1).

A bank's estimate of operational risk exposure includes both EOL and UOL, forming the basis of the bank's risk-based capital requirement for operational risk. The bank's estimate of operational risk exposure should also consider qualitative factors (for example, changes in business environment and internal control factors). Qualitative factors can be incorporated into the bank's quantification methodology in different ways and at different modeling stages. While not prescribing a specific methodology, the Agencies will assess the processes banks use to integrate qualitative factors into the quantification of operational risk exposure.

Graph 1: Stylized Representation of Risk Quantification*



* Note: Graph 1 is a stylized representation of Operational Risk quantification and does not incorporate the concepts of eligible operational loss offsets or qualifying risk mitigants that a bank may be able to consider in the calculation of its risk-based capital requirement for operational risk.

Operational risk exposure may be reduced with eligible operational risk offsets, up to the amount of EOL (see Section B below). The bank's primary Federal supervisor will review the bank's use of eligible operational risk offsets for appropriateness. A bank may also adjust its operational risk exposure to reflect reductions from operational risk mitigants (for example, insurance), subject to the qualification requirements and limits (described in Section E below).

The dollar risk-based capital requirement for operational risk, resulting from the bank's risk quantification system, is the *greater* of:

- The bank's operational risk exposure adjusted for qualifying operational risk mitigants minus eligible operational risk offsets; *or*
- 0.8 multiplied by the difference between the bank's operational risk exposure and eligible operational risk offsets (if any).

If the bank has no qualifying operational risk mitigants, the dollar risk-based capital requirement for operational risk is equal to its operational risk exposure less any eligible operational risk offsets.

In recognition of the modeling challenges in legal entities with little internal operational risk loss data, a bank may generate an estimate of its operational risk exposure using an alternative approach to that described above, with the prior written approval of its primary Federal supervisor. Requirements for the use of an alternative approach are provided in Section V.F. below.

The bank's risk-weighted asset amount for operational risk equals the bank's dollar risk-based capital requirement for operational risk determined as described above multiplied by 12.5.

A. Analytical Framework

S 23. The bank must have an operational risk quantification system that provides an estimate of the bank's operational risk exposure.

S 24. The bank's operational risk quantification system must use a combination of internal operational loss event data, relevant external operational loss event data, business environment and internal control factor assessments, and scenario analysis results. The bank should combine these elements in a manner that most effectively enables it to quantify its operational risk exposure. The bank should choose the analytical framework that is most appropriate to its business model.

S 25. The bank must review and update its operational risk quantification system whenever it becomes aware of information that may have a material effect on the bank's estimate of operational risk exposure or risk-based capital requirement for operational risk, but no less frequently than annually. A complete review and recalculation of the bank's quantification system, including all modeling inputs and assumptions, must be done at least annually.

While not specifying the exact methodology, the Agencies have developed regulatory requirements that a bank must use to determine its operational risk exposure. These requirements are intended to help ensure that the regulation can accommodate continued evolution of operational risk quantification techniques, yet remain amenable to consistent application and enforcement across banks. The Agencies expect that there will be significant variation in analytical frameworks across banks, with each bank tailoring its framework to leverage existing technology platforms and risk management procedures. The framework must use the following inputs: Internal operational loss event data, relevant external operational loss event data, assessments of business environment and internal control factors, and scenario analysis. The Agencies expect that there will be some uncertainty in the analytical frameworks because of the evolving nature of operational risk data and assessment systems. Therefore, the analytical frameworks should be conservative and reflect the evolutionary status of operational risk management, measurement and quantification, and its impact on data capture and analytical modeling.

The Agencies expect there will be variation across banks in the combination and weighting of the four elements. In weighting each element, a bank should consider availability and applicability of each of the four elements within each unit of measure. For example, banks with comprehensive internal data that reflect the full range of their potential loss exposures may choose to place less emphasis on external data or scenario analysis. Conversely, banks with limited internal data would generally rely more heavily on external data and scenario analysis in estimating their operational risk exposure.

Banks should be able to demonstrate (see Standard 30) the effect of each element on the operational risk exposure estimate. In cases where this is not possible, or where an element is not used as a direct input into the quantitative model, the bank should calculate a benchmark estimate using that element individually.

A bank must review and update its operational risk quantification system whenever it becomes aware of information that may have a material effect on the bank's estimate of operational risk exposure, but no less frequently than annually. On a quarterly basis, a bank must publicly disclose its total and Tier 1 risk-based capital ratios and their components, including operational risk related data (see Appendix D). As a part of this disclosure process, the bank should consider any material changes in either (1) the qualitative/quantitative inputs and assumptions from the previous quarter or (2) the risk profile of the bank that may affect the estimate of operational risk exposure or the resulting operational risk capital requirement. Specifically, the bank should ensure that all major inputs, elements, and assumptions are reviewed, and adjusted as necessary, to reflect relevant changes in the bank's operational risk profile (for example, changes in loss experience, data inputs, business activity, external factors, assumptions, insurance coverage, and eligible offsets). Senior management should determine and document which components of the quantification system will need to be revised prior to recalculating the bank's operational risk exposure and operational risk capital requirement due to any identified material change in inputs or assumptions. A complete review and recalculation of a bank's estimate of operational risk exposure and its risk-based capital requirement for operational risk, including updating all modeling inputs and assumptions, must be done at least annually.

B. Eligible Operational Risk Offsets

S 26. In calculating the risk-based capital requirement for operational risk, management may deduct certain eligible operational risk offsets from its estimate of operational risk exposure. To the extent that these offsets do not fully cover expected operational loss (EOL), the bank's risk-based capital requirement for operational risk must incorporate the shortfall. Eligible operational risk offsets may only be used to offset EOL, not UOL.

In calculating the risk-based capital requirement for operational risk, a bank may deduct certain eligible operational risk offsets from its estimate of operational risk exposure. As with other aspects of the AMA, the eligible operational risk offset process is intended to be flexible and dynamic in order to accommodate the continuing evolution of underlying business practices and accounting standards. Supervisors will review all offsets to ensure they are eligible as defined by the NPR. The Agencies intend to develop a process of approving eligible operational risk offsets that is practical, clearly articulated, and grounded in prudential bank supervisory principles. Banks should clearly document how eligible operational risk offsets are measured and accounted for, including how they meet the conditions outlined above.

The maximum offset is bounded by EOL. Furthermore, the losses

corresponding to the eligible operational risk offset must be fully consistent with the EOL-plus-UOL capital requirement calculated using the bank's AMA model. If certain small losses are not modeled (for example, because they are below a collection threshold), an operational risk offset should not be taken for such losses.

Banks must demonstrate that losses corresponding to the potential eligible operational risk offset are highly predictable and reasonably stable. The bank's estimation process for eligible operational risk offsets should be consistent over time. The Agencies consider balance sheet reserves, established consistent with GAAP to cover such losses, as eligible operational risk offsets. Eligible offsets also must be clear capital substitutes or otherwise available to cover EOL with a high degree of certainty over a one-year horizon. Reserves associated with large, unexpected operational losses (UOL) do not qualify as eligible operational risk offsets. While additional eligible operational risk offsets may be considered in the future, the Agencies' review of the implementation of AMA Systems indicates that banks so far have only been able to demonstrate that losses resulting from external credit card fraud or securities processing errors may meet the test of being highly predictable and reasonably stable.

C. Unit of Measure

S 27. The bank must employ a unit of measure that is appropriate for the bank's range of business activities and the variety of operational loss events to which it is exposed, and that does not combine business activities or operational loss events with different risk profiles within the same loss distribution.

Banks should weigh the advantages and disadvantages of estimating a single loss distribution or very few loss distributions (top-down approach), versus a larger number of loss distributions for specific event types and/or business lines (bottom-up approach). One advantage of the top-down approach is that data sufficiency is less likely to be a limiting factor, whereas with the bottom-up approach there may be pockets of missing or limited data. However, a loss severity distribution may be more difficult to specify with the top-down approach, as it is a statistical mixture of (potentially) heterogeneous business line and event type distributions. Supervisors will consider the conditions necessary for the validity of top-down approaches and evaluate whether these conditions are met in their particular individual circumstances.

D. Accounting for Dependence

S 28. The bank may use internal estimates of dependence among operational losses within and across business lines and operational loss events if the bank can demonstrate to the satisfaction of its primary Federal supervisor that the bank's process for estimating dependence is sound, robust to a variety of scenarios, and implemented with integrity, and allows for uncertainty surrounding the estimates. If the bank has not made such a demonstration, it must sum operational risk exposure estimates across units of measures to calculate its total operational risk exposure.

A bank using internal estimates of dependence, whether explicit or embedded, must demonstrate that its process for estimating dependency is sound, robust to a variety of scenarios, and implemented with integrity, and allows for the uncertainty surrounding the estimates. To the extent a bank cannot support its process for estimating dependence, the bank must sum operational risk exposure estimates across its chosen units of measure to calculate the bank's total operational risk exposure. While dependence modeling for operational risk is an evolving area, banks should consider the following principles and guidelines:

- Assumptions regarding dependence should be supported by empirical analysis (data) where possible. The Agencies expect this analysis will become more feasible over time as data availability increases and greater consensus emerges with regard to dependence modeling.
- Where empirical support is not possible, dependence assumptions should be based on the judgment of business line experts. In such cases, it would be important to express dependence concepts in intuitive terms. For example, business line experts could assess the probability of certain large loss event scenarios occurring simultaneously. For banks that already rely heavily on scenario analysis, using expert judgment to assess dependence in this manner would merely be an extension of the scenario analysis process from a business line perspective to a broader perspective.
- The bank should demonstrate that it has considered the possibility that dependence may not be constant over time and may increase during stress environments.
- The bank should develop a process for assessing on-going improvements to the approach (for example, through out-of-sample testing). Such advances would in turn enhance the ability of the bank to estimate its aggregate operational losses at the 99.9 percent confidence level.
- Banks should perform sensitivity analyses of the effect of alternative dependence assumptions on their operational risk exposure estimate.
- Banks should not restrict dependence structures to those based on normal distributions, as normality may underestimate the amount of dependence between tail events.
- Dependence assumptions should be consistent with the way in which loss events are defined and used. For example, if one underlying factor causes multiple losses, such as an earthquake that results in damage to multiple buildings, recording multiple loss entries in the data set would require the bank to model the dependence between these losses. Judicious aggregation of related losses within the data set (in this example, aggregating all of the losses caused by a single earthquake into one loss entry) could satisfy some of the expectations regarding dependence modeling.
- The choice between a bottom-up or a top-down modeling approach affects how a bank accounts for dependence. A bottom-up approach requires explicit assumptions regarding dependence to estimate operational risk exposure at the bank-wide level. Top-down approaches inherently mask dependence and, under many circumstances, assume statistical independence across business lines and event types. To the extent a top-down approach is used, a bank should ensure that dependence within units of measure is suitably reflected in the operational risk exposure estimate.
- As with other areas of the framework, assumptions regarding dependence should be conservative given the uncertainties surrounding dependence modeling for operational risk. The Agencies will closely review frameworks that assume statistical independence across loss events.

E. Risk Mitigation

S 29. The bank may adjust its operational risk exposure results by no more than 20 percent to reflect the impact of operational risk mitigants. In order to recognize the effects of risk mitigants, management must estimate its operational risk exposure with and without their effects.

There are many mechanisms to manage operational risk, including risk transfer through risk mitigation products. Because risk mitigation can be an important element in limiting or reducing operational risk exposure in a

bank, an adjustment that will directly affect the amount of regulatory capital that is held for operational risk is being permitted. The adjustment is limited to 20 percent of the overall operational risk exposure less any eligible operational risk offsets.

In order to recognize the effects of risk mitigants, the bank must calculate two estimates of its operational risk exposure. The first estimate should include the effects of risk mitigants, in addition to all other adjustments and effects (for example, expected losses, diversification, and qualitative adjustments) that are to be reflected in the risk-based capital requirement for operational risk. The second estimate should be identical to the first, except that it should not reflect the effects of risk mitigants. The first exposure estimate should be used to calculate risk-weighted assets for operational risk (as described in the introduction to Section V), provided that it is at least 80 percent of the second estimate. If the first exposure estimate is less than 80 percent of the second estimate, then risk weighted assets for operational risk should be calculated as the second exposure estimate multiplied by 0.8 and by 12.5.

Currently, the primary risk mitigant used for operational risk is insurance. The industry has raised the possibility that some securities products may be developed to provide risk mitigation benefits; however, to date no specific products have emerged that have characteristics sufficient to be considered a capital replacement for operational risk. However, as innovation in this field continues, a bank may be able to realize the benefits of risk mitigation through certain capital markets instruments with the approval of their primary Federal supervisor.

For a bank that wishes to adjust its regulatory capital requirement as a result of the risk mitigating effect of insurance, management must demonstrate that the insurance policy:

- Has been provided by an unaffiliated company that has a minimum claims paying ability that is rated in one of the three highest ratings categories by a Nationally Recognized Statistical Rating Organization (NRSRO); [18]
- Has an initial term of at least one year and a residual term of more than 90 days;
- Has a minimum notice period for cancellation by the provider of 90 days;
- Has no exclusions or limitations based upon regulatory action or for the receiver or liquidator of a failed bank; and
- Coverage has been explicitly mapped to a potential operational loss event.

Insurance policies that meet these standards may be incorporated into a bank's adjustment for risk mitigation. A bank should be conservative in its recognition of such policies; for example, the bank should demonstrate that insurance policies used as the basis for the adjustment have a history of timely payouts. Banks must decrease the amount of the adjustment if the remaining term is less than one year. The bank's methodology for incorporating the effects of insurance must also capture, through appropriate discounts to the amount of risk mitigation, the residual term of the policy, if the remaining term is less than one year. In addition, the bank should be able to show that the policy would actually be used in the event of a loss situation; that is, the deductible should not be set so high that no loss would ever conceivably exceed the deductible threshold.

The Agencies do not specify how banks should calculate the risk mitigation adjustment. Nevertheless, banks should use conservative assumptions when calculating adjustments. As the payout of a particular policy varies over time and depends upon the frequency and severity of covered losses, calculation of the adjustment should be embedded in the analytical framework rather than being an ex-post adjustment to the quantified operational risk exposure number. A bank should discount (i.e., apply its own estimates of haircuts) the impact of insurance coverage to take into account factors that may limit the likelihood or size of claims payouts. Among these factors are the remaining term of a policy (for example, when it is less than a year); the willingness and ability of the insurer to pay on a claim in a timely manner; the legal risk that a claim may be disputed; and the possibility that a policy can be cancelled before the contractual expiration.

F. Alternative Approaches for Depository Institutions

The Agencies recognize that in certain limited circumstances, there may not be sufficient data available for a bank to generate an AMA estimate of its own operational risk exposure at the 99.9 percent confidence level. In these circumstances, a bank may propose use of an alternative operational risk quantification system, subject to approval by the bank's primary Federal supervisor. The Agencies are not prescribing any estimation methodologies for the alternative approach. However, the Agencies expect that use of an alternative approach will occur on a very limited basis. Furthermore, such approaches will not be available at the bank holding company level.

A bank proposing to use an alternative operational risk quantification system must submit a proposal to its primary Federal supervisor. In evaluating a bank's proposal, the primary supervisor will review the bank's justification in light of:

- The bank's size, complexity, and risk profile; and
- Whether the proposed approach can be supported empirically.

Additional areas that a primary Federal supervisory may consider in its evaluation of a proposal to use an alternative approach include:

- The bank's ability to establish that, for data or other reasons, a stand-alone AMA is not feasible or that it would not result in a credible capital estimate;
- Whether capital levels using the alternative approach are commensurate with the bank's operational risk profile;
- Whether the alternative approach is sensitive to changes in the bank's operational risk profile; and
- Whether the proposed approach allows for the bank's board members to fulfill their fiduciary responsibilities to ensure that the bank is adequately capitalized.

Furthermore, a bank using an alternative operational risk quantification system must meet the regulatory requirements for the establishment and use of operational risk management, and data and assessment systems.[19]

A bank proposing an alternative approach that is based on an allocation methodology should be aware of certain limitations associated with the use of such an approach. Specifically, the agencies will not accept an allocation of operational risk capital requirements that includes non-depository institutions or the benefits of diversification across entities. The exclusion of allocations that include non-depository institutions is in recognition that depositors and creditors of a depository institution generally

[18] Rating agencies may use slightly different rating scales. For the purpose of this supervisory guidance, the insurer must have a rating that is at least the equivalent of an ''A'' under Standard and Poor's Insurer Financial Strength Ratings or an ''A2'' under Moody's Insurance Financial Strength Ratings.

[19] See also Standards 1 through 22 for supervisory guidance on risk management and data and assessment systems.

have no legal recourse to capital funds that are not held by the depository institution or its affiliate depository institutions.[20]

G. Documentation of Operational Risk Quantification Systems

S 30. The bank must document all material aspects of its AMA System. This documentation should include the rationale for the development, operation, and assumptions underpinning its chosen analytical framework, including the choice of inputs, distributional assumptions, and the weighting across qualitative and quantitative elements.

Whatever analytical approach a bank chooses, it must document all material aspects of its AMA System. Generally, the documentation should include: A discussion of the bank's modeling philosophy; a ''how to'' guide that would provide sufficient detail for an independent party to substantially replicate the capital calculation; and an audit trail of any changes to the framework's assumptions. More specifically, this documentation should:

- Provide an overview of the analytical approach (for example, description of the model(s) and/or statistical technique(s) used, model inputs and outputs, and steps taken to ensure the integrity of the data used in the estimation process).
- Identify how the different inputs are combined and weighted to arrive at the overall operational risk exposure so that the analytical framework is transparent.
- Demonstrate that the analytical framework is comprehensive and internally consistent. Comprehensive and consistent means that all required inputs are incorporated and appropriately weighted and that there are not overlaps or double counting.
- Identify the quantitative assumptions embedded in the methodology and provide explanations for the choice and limitations of these assumptions (for example, quantitative assumptions include distributional assumptions, and dependence assumptions between operational losses across and within business lines).
- Include where possible, documentation of quantitative measures of each assumption's validity, based on the relevant data elements (for example, statistical goodness-of-fit tests should be used to evaluate distributional assumptions).
- Identify the qualitative assumptions embedded in the methodology and provide explanations for the choice of these assumptions. (For example, qualitative assumptions could include the use of business environment and internal control factor assessments, scenario analysis, and business judgment to derive dependence assumptions).
- Provide results based on alternative quantitative and qualitative assumptions to gauge the overall model's sensitivity to these assumptions.
- Identify all simplifying or normalizing assumptions. (For example, assumptions could include setting a maximum cap on losses in order to influence the shape of the severity distribution or to normalize results at specific units of measure for internal capital purposes or prior to aggregation. Assumptions should be consistent with relevant loss data from both internal and external sources).
- Provide results to assess the impact of simplifying or normalizing assumptions.
- Compare the operational risk exposure estimate generated by the analytical framework with actual loss experience over time, to assess the framework's performance and the reasonableness of its outputs.
- Identify all limitations of and changes to assumptions, and provide explanations for such changes.
- Include details and rationale for establishing thresholds and their use.
- Include information on the technical process underlying the analytical approach (for example, programming language(s) and software used, logical process flow diagrams, system or source of record for the data elements, how outputs are used in subsequent steps of the approach).
- Include technical change control information relating to the analytical approach (for example, a record of the changes, the associated rationale for the changes and the effects on the analytical approach).
- Provide the results of an independent verification and validation of the analytical framework.

VI. Data Management and Maintenance

S 31. Banks using the AMA approach for regulatory capital purposes must have data management and maintenance systems that adequately support all aspects of an AMA System.

AMA data management systems must support the requirements for the operational risk management, data and assessment, and quantification processes, as well as the verification and validation mechanisms described in this guidance. The precise data to be collected will be determined by a bank's specific AMA System methodology.

A bank should have access to the key data elements needed for operational risk management, data and assessment, and quantification. An important factor in ensuring consistent reporting of the data elements is the development of comprehensive definitions for each data element used by the bank for reporting operational loss events or for the risk assessment inputs. The data must be stored in an electronic format to allow for timely retrieval for analysis, verification, validation, reporting, and disclosure purposes.

While banks have substantial flexibility in the design of their data maintenance systems, data systems should be of sufficient depth, scope, and reliability to implement and evaluate the AMA System. The systems should be capable of:

- Identifying and tracking operational risk loss events from initial discovery through final resolution across all business lines, including instances where a loss event impacts multiple business lines.
- Producing timely and accurate internal and public reports on operational risk data and assessment, and quantification results, including patterns revealed by loss data, scenario analysis, and business environment and internal control factor assessments. The bank should also have sufficient data to produce exception reports for management (for example, a record of and justification for omitted large loss events).
- Supporting risk management activities and providing access to data management processes for all interested parties, including audit.

In addition, the systems must be capable of retaining sufficient data elements related to key risk drivers to permit adequate monitoring, validation, and refinement of the bank's AMA System.

Banks should also be able to use the data to identify patterns, track problem areas and identify emerging risks. Such data should include not only operational loss event information, but also information on business environment and internal control factor assessments, which are incorporated into the operational risk exposure calculation.

Since data are collected at different stages of the risk management and quantification process, and involve a

[20] The cross-guarantee provision of the Federal Deposit Insurance Act provides that a depository institution is liable for any losses incurred by the FDIC in connection with the failure of commonly-controlled depository institutions. There are no statutory provisions requiring cross-guarantees between a depository institution and its non-depository institution affiliates.

variety of groups and individuals, there are potential challenges to ensuring the quality of the data including:

- Retaining data over long timeframes;
- Ensuring that data purchased from, or maintained by, third parties meet the bank's standards; and
- Retaining sufficient data elements and documentation of model methodologies, parameter estimates and assumptions to permit adequate ex-post review of operational risk data.

Banks' policies and controls should address these potential data challenges. Furthermore, for external data, banks should seek reasonable assurance from third-party providers concerning data quality and integrity and a clear understanding of the sources and limitations of external data.

Management should identify those responsible for maintaining the bank's data maintenance systems. In particular, policies and processes should be developed for delivering, storing, retaining, and updating the data warehouse. Policies and procedures should also cover the edit checks for data input functions. Like other areas of the AMA System, it is critical that management ensure accountability for ongoing data maintenance, as this will impact operational risk management and measurement efforts.

VII. Verification and Validation

S 32. The bank must validate, on an ongoing basis, its AMA system. The bank's validation process must be independent of the AMA System's development, implementation, and operation, or the validation process must be subject to an independent review of its adequacy and effectiveness.

Bank policies and procedures should clearly differentiate the roles and responsibilities of the independent verification and validation functions. Verification of the bank's AMA System typically encompasses internal and external audit activities. More specifically, verification includes the work done to test and verify that the policies, procedures, and processes that make up the bank's AMA System are working effectively and as intended. In addition, the verification function also ensures that validation of AMA models was completed in accordance with the bank's validation policy. Validation, often performed by non-audit staff, includes the processes the bank uses to test and assess the accuracy and integrity of models being used to quantify operational risk exposure and risk-based capital for operational risk. The primary Federal supervisor will consider, whenever possible, the work performed by the bank's verification and validation functions when assessing the bank's AMA System.

Banks may use independent and qualified internal (for example, internal audit, and quality assurance) or external parties to perform verification and validation. The verification and validation functions should annually assess and report to the board of directors on the adequacy of the overall AMA System. This assessment should include the review of both the accuracy and integrity of the AMA System, control elements, as well as the scope and effectiveness of operational risk reporting. The verification and validation functions should also review reporting processes to ensure the timeliness, accuracy, and comprehensiveness of operational risk reporting systems, both at the firm-wide and the line of business levels. Other areas of assessment include, but are not limited to:

- Organizational structure, governance, and oversight;
- Internal and external data sources, collection processes, and repositories;
- Scenario analysis;
- Reporting and MIS;
- Business environment and internal control factor assessments;
- Quantification methodology and assumptions, including a review of the integrity of the operational risk exposure calculation; and
- Compliance with internal standards for validation of the models used to quantify operational risk exposure.

Banks should have a formal written validation process that documents the development of risk quantification models and assures model accuracy, whether developed internally or externally. The validation process should address model documentation, data sources, model assumptions, coding and mathematical computations, conceptual soundness of the approach, comparison of estimates to results of alternative quantitative and qualitative models, model performance evaluation, and out-of-sample testing. The validation process must also require the bank to periodically stress test its quantitative and qualitative models. Stress testing must include a consideration of how economic cycles, especially downturns, affect the bank's operational risk-based capital requirement. Technically competent individuals who are independent of the development, implementation, or operation of the model should perform validation. These individuals may or may not be a part of the internal audit function. If validation is done by internal audit, staff performing the validation of bank models should not participate in the verification of the validation process.

Validation of operational risk models should include review of:

- Adjustments to empirical operational risk capital estimates, including operational risk exposure;
- On-going monitoring processes that include verification of processes and benchmarking;
- Outcome analysis processes that includes model performance evaluation and out-of-sample testing;
- The operational risk models' conceptual soundness and underlying assumptions;
- Assumptions underlying operational risk exposure, data decision models, and the risk-based capital requirement for operational risk;
- Stress testing, robustness, and sensitivity analysis, as appropriate; and
- The sufficiency of the documentation pertaining to the analytical approach and of the change control process, including a review of the historical record of changes and associated rationale.

Appropriate reports summarizing the results of independent verification and validation of the bank's AMA System, including associated models, should be provided to the board of directors and appropriate management. The board of directors should ensure that senior management initiates timely corrective action where necessary.

The bank may determine the scope of its annual assessment, and the frequency of specific verification and validation work, based on risk-based auditing principles. The extent of verification of individual components of the bank's AMA System may be based on a risk assessment of the overall system, which identifies key processes, controls, activities, and assumptions. All material components of a bank's AMA System should be assessed and tested (as appropriate) at least annually, with the remaining components tested consistent with risk-based auditing and testing principles. Documentation of the verification and validation program should support the scope and frequency of work performed.

Appendix A—The NPR Qualification Requirements, Risk-Weighted Assets for Operational Risk, and Disclosure Requirements

Part III. Qualification

Section 22. Qualification Requirements [21]

(a) *Process and systems requirements.* (1) A [bank] [22] must have a rigorous process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital.

(2) The systems and processes used by a [bank] for risk-based capital purposes under this appendix must be consistent with the [bank]'s internal risk management processes and management information reporting systems.

(3) Each [bank] must have an appropriate infrastructure with risk measurement and management processes that meet the qualification requirements of this section and are appropriate given the [bank]'s size and level of complexity. Regardless of whether the systems and models that generate the risk parameters necessary for calculating a [bank]'s risk-based capital requirements are located at any affiliate of the [bank], the [bank] itself must ensure that the risk parameters and reference data used to determine its risk-based capital requirements are representative of its own credit risk and operational risk exposures.

—Text omitted—

(h) Operational risk—(1) Operational risk management processes. A [bank] must:

(i) Have an operational risk management function that:

(A) Is independent of business line management; and

(B) Is responsible for designing, implementing, and overseeing the [bank]'s operational risk data and assessment systems, operational risk quantification systems, and related processes;

(ii) Have and document a process to identify, measure, monitor, and control operational risk in [bank] products, activities, processes, and systems (which process must capture business environment and internal control factors affecting the [bank]'s operational risk profile); and

(iii) Report operational risk exposures, operational loss events, and other relevant operational risk information to business unit management, senior management, and the board of directors (or a designated committee of the board).

(2) Operational risk data and assessment systems. A [bank] must have operational risk data and assessment systems that capture operational risks to which the [bank] is exposed. The [bank]'s operational risk data and assessment systems must:

(i) Be structured in a manner consistent with the [bank]'s current business activities, risk profile, technological processes, and risk management processes; and

(ii) Include credible, transparent, systematic, and verifiable processes that incorporate the following elements on an ongoing basis:

(A) Internal operational loss event data. The [bank] must have a systematic process for capturing and using internal operational loss event data in its operational risk data and assessment systems.

(*1*) The [bank]'s operational risk data and assessment systems must include a historical observation period of at least five years for internal operational loss event data (or such shorter period approved by [AGENCY] to address transitional situations, such as integrating a new business line).

(*2*) The [bank] may refrain from collecting internal operational loss event data for individual operational losses below established dollar threshold amounts if the [bank] can demonstrate to the satisfaction of the [AGENCY] that the thresholds are reasonable, do not exclude important internal operational loss event data, and permit the [bank] to capture substantially all the dollar value of the [bank]'s operational losses.

(B) *External operational loss event data.* The [bank] must have a systematic process for determining its methodologies for incorporating external operational loss data into its operational risk data and assessment systems.

(C) *Scenario analysis.* The [bank] must have a systematic process for determining its methodologies for incorporating scenario analysis into its operational risk data and assessment systems.

(D) *Business environment and internal control factors.* The [bank] must incorporate business environment and internal control factors into its operational risk data and assessment systems. The [bank] must also periodically compare the results of its prior business environment and internal control factor assessments against its actual operational losses incurred in the intervening period.

(3) *Operational risk quantification systems.* (i) The [bank]'s operational risk quantification systems:

(A) Must generate estimates of the [bank]'s operational risk exposure using its operational risk data and assessment systems; and

(B) Must employ a unit of measure that is appropriate for the [bank]'s range of business activities and the variety of operational loss events to which it is exposed, and that does not combine business activities or operational loss events with different risk profiles within the same loss distribution.

(C) May use internal estimates of dependence among operational losses within and across business lines and operational loss events if the [bank] can demonstrate to the satisfaction of [AGENCY] that its process for estimating dependence is sound, robust to a variety of scenarios, and implemented with integrity, and allows for the uncertainty surrounding the estimates. If the [bank] has not made such a demonstration, it must sum operational risk exposure estimates across units of measure to calculate its total operational risk exposure.

(D) Must be reviewed and updated (as appropriate) whenever the [bank] becomes aware of information that may have a material effect on the [bank]'s estimate of operational risk exposure, but no less frequently than annually.

(ii) With the prior written approval of [AGENCY], a [bank] may generate an estimate of its operational risk exposure using an alternative approach to that specified in paragraph (h)(3)(i) of this section. A [bank] proposing to use such an alternative operational risk quantification system must submit a proposal to [AGENCY]. In considering a [bank]'s proposal to use an alternative operational risk quantification system, [AGENCY] will consider the following principles:

(A) Use of the alternative operational risk quantification system will be allowed only on an exception basis, considering the size, complexity, and risk profile of a [bank];

(B) The [bank] must demonstrate that its estimate of its operational risk exposure generated under the alternative operational risk quantification system is appropriate and can be supported empirically; and

(C) A [bank] must not use an allocation of operational risk capital requirements that includes entities other than depository institutions or the benefits of diversification across entities.

[21] 71 FR 55922 through 55924 (Sept. 25, 2006).

[22] For simplicity, and unless otherwise noted, the NPR uses the term [bank] to include banks, savings associations, and bank holding companies. [AGENCY] refers to the primary Federal supervisor of the bank applying the rules.

(i) *Data management and maintenance.* (1) A [bank] must have data management and maintenance systems that adequately support all aspects of its advanced systems and the timely and accurate reporting of risk-based capital requirements.

(2) A [bank] must retain data using an electronic format that allows timely retrieval of data for analysis, validation, reporting, and disclosure purposes.

(3) A [bank] must retain sufficient data elements related to key risk drivers to permit adequate monitoring, validation, and refinement of its advanced systems.

(j) *Control, oversight, and validation mechanisms.* (1) The [bank]'s senior management must ensure that all components of the [bank]'s advanced systems function effectively and comply with the qualification requirements in this section.

(2) The [bank]'s board of directors (or a designated committee of the board) must at least annually evaluate the effectiveness of, and approve, the [bank]'s advanced systems.

(3) A [bank] must have an effective system of controls and oversight that:

(i) Ensures ongoing compliance with the qualification requirements in this section;

(ii) Maintains the integrity, reliability, and accuracy of the [bank]'s advanced systems; and

(iii) Includes adequate governance and project management processes.

(4) The [bank] must validate, on an ongoing basis, its advanced systems. The [bank]'s validation process must be independent of the advanced systems' development, implementation, and operation, or the validation process must be subjected to an independent review of its adequacy and effectiveness. Validation must include:

(i) The evaluation of the conceptual soundness of (including developmental evidence supporting) the advanced systems;

(ii) An on-going monitoring process that includes verification of processes and benchmarking; and

(iii) An outcomes analysis process that includes back-testing.

(5) The [bank] must have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the [bank]'s advanced systems and reports its findings to the [bank]'s board of directors (or a committee thereof).

(6) The [bank] must periodically stress test its advanced systems. The stress testing must include a consideration of how economic cycles, especially downturns, affect risk-based capital requirements (including migration across rating grades and segments and the credit risk mitigation benefits of double default treatment).

(k) *Documentation.* The [bank] must adequately document all material aspects of its advanced systems.

—Text omitted—

Part VII. Risk-Weighted Assets for Operational Risk

Section 61. Qualification Requirements for Incorporation of Operational Risk Mitigants [23]

(a) Qualification to use operational risk mitigants. A [bank] may adjust its estimate of operational risk exposure to reflect qualifying operational risk mitigants if:

(1) The [bank]'s operational risk quantification system is able to generate an estimate of the [bank]'s operational risk exposure (which does not incorporate qualifying operational risk mitigants) and an estimate of the [bank]'s operational risk exposure adjusted to incorporate qualifying operational risk mitigants; and

(2) The [bank]'s methodology for incorporating the effects of insurance, if the [bank] uses insurance as an operational risk mitigant, captures through appropriate discounts to the amount of risk mitigation:

(i) The residual term of the policy, where less than one year;

(ii) The cancellation terms of the policy, where less than one year;

(iii) The policy's timeliness of payment;

(iv) The uncertainty of payment by the provider of the policy; and

(v) Mismatches in coverage between the policy and the hedged operational loss event.

(b) Qualifying operational risk mitigants. Qualifying operational risk mitigants are:

(1) Insurance that:

(i) Is provided by an unaffiliated company that has a claims payment ability that is rated in one of the three highest rating categories by a NRSRO;

(ii) Has an initial term of at least one year and a residual term of more than 90 days;

(iii) Has a minimum notice period for cancellation by the provider of 90 days;

(iv) Has no exclusions or limitations based upon regulatory action or for the receiver or liquidator of a failed depository institution; and

(v) Is explicitly mapped to a potential operational loss event; and

(2) Operational risk mitigants other than insurance for which the [AGENCY] has given prior written approval. In evaluating an operational risk mitigant other than insurance, [AGENCY] will consider whether the operational risk mitigant covers potential operational losses in a manner equivalent to holding regulatory capital.

Section 62. Mechanics of Risk-Weighted Asset Calculation

(a) If a [bank] does not qualify to use or does not have qualifying operational risk mitigants, the [bank]'s dollar risk-based capital requirement for operational risk is its operational risk exposure minus eligible operational risk offsets (if any).

(b) If a [bank] qualifies to use operational risk mitigants and has qualifying operational risk mitigants, the [bank]'s dollar risk-based capital requirement for operational risk is the greater of:

(1) The [bank]'s operational risk exposure adjusted for qualifying operational risk mitigants minus eligible operational risk offsets (if any); or

(2) 0.8 multiplied by the difference between:

(i) The [bank]'s operational risk exposure; and

(ii) Eligible operational risk offsets (if any).

(c) The [bank]'s risk-weighted asset amount for operational risk equals the [bank]'s dollar risk-based capital requirement for operational risk determined under paragraph (a) or (b) of this section multiplied by 12.5.

Part VIII. Disclosure

Section 71. Disclosure Requirements [24]

(a) Each [bank] must publicly disclose each quarter its total and tier 1 risk-based capital ratios and their components (that is, tier 1 capital, tier 2 capital, total qualifying capital, and total risk-weighted assets).[25]

[Disclosure paragraph (b)]

[Disclosure paragraph (c)]

—Text omitted—

[23] 71 FR 55946 through 55947 (Sept. 25, 2006).

[24] 71 FR 55947 and 55952 (Sept. 25, 2006).

[25] Other public disclosure requirements continue to apply—for example, Federal securities law and regulatory reporting requirements.

TABLE 11.9—OPERATIONAL RISK

Qualitative disclosures	(a)	The general qualitative disclosure requirement for operational risk.
	(b)	Description of the AMA, including a discussion of relevant internal and external factors considered in the bank holding company's measurement approach.
	(c)	A description of the use of insurance for the purpose of mitigating operational risk.

Appendix B—Supervisory Standards

S 1. The bank's AMA System must include an operational risk management function and audit function that are independent of business line management. The operational risk management function should address operational risk on a firm-wide basis.

S 2. The bank must have and document a process that clearly describes its AMA System, including how the bank identifies, measures, monitors, and controls operational risk.

S 3. The bank must maintain effective internal controls supporting its AMA System.

S 4. The bank must ensure that an effective framework is in place to identify, measure, monitor, and control operational risk, and to accurately compute the bank's operational risk component of the bank's risk-based capital requirement. The board of directors must at least annually evaluate the effectiveness of, and approve, the bank's AMA System, including the strength of the bank's control infrastructure.

S 5. The board of directors and management should ensure that the bank's operational risk management, data and assessment, and quantification processes are appropriately integrated into the bank's existing risk management and decision-making processes and that there are adequate resources to support these processes throughout the bank.

S 6. The bank must have a firm-wide operational risk management function that oversees the AMA System and is independent of business line management. The operational risk management function is also responsible for the development of operational risk data and assessment systems, operational risk quantification systems, and related processes throughout the bank.

S 7. The firm-wide operational risk management function should ensure adequate analysis and reporting of operational risk information. The function should also develop and report on the firm-wide operational risk profile.

S 8. Line of business management is responsible for ensuring appropriate day-to-day management of the operational risks within its business unit.

S 9. Line of business management should ensure that internal controls and practices within its business unit are consistent with firm-wide policies, processes, and procedures.

S 10. The board of directors and senior management must receive reports on operational risk exposure, operational risk loss events, and other relevant operational risk information. The reports should include information regarding firm-wide and business line risk profiles, loss experience, and relevant business environment and internal control factor assessments. These reports should be received quarterly.

S 11. The bank must have a systematic process for incorporating internal loss event data, external loss event data, scenario analyses, and assessments of its business environment and internal controls factors to support both its operational risk management and measurement framework, as well as its calculation of the bank's operational risk component of its risk-based capital requirement.

S 12. The bank must use the regulatory definition of operational risk when assessing the operational risks to which the bank is exposed in order to calculate its risk-based capital requirement for operational risk. The bank should have clear standards for the collection and modification of all four elements in the operational risk data and assessment systems that support its AMA System.

S 13. The bank must have a historical observation period of at least five years for internal operational loss event data. A shorter period may be approved by the primary Federal supervisor to address transitional situations, such as integrating a new business line. Internal data should be captured across all business lines, corporate functions, events, product types, and geographic locations. The bank must have a systematic process for capturing and using internal operational loss event data in its operational risk data and assessment systems.

S 14. The bank should be able to map internal operational losses to the seven operational loss-event categories.

S 15. The bank should have a policy that identifies when an operational loss is recognized and should be added to the loss event database. The policy should provide for consistent treatment across the bank.

S 16. The bank may establish appropriate internal operational loss event data thresholds and, if so, must demonstrate the appropriateness of such thresholds.

S 17. The bank should have a clear policy that allows for the consistent treatment of loss event classifications (for example, credit, market, or operational loss events) across the organization.

S 18. The bank must have a systematic process for determining how external loss data will be incorporated into its operational risk data and assessment systems.

S 19. The bank should systematically review external data to ensure an understanding of industry operational loss experience.

S 20. The bank must have a systematic process for determining how scenario analysis will be incorporated into its operational risk data and assessment systems. S 21. The bank must incorporate business environment and internal control factors into the bank's operational risk data and assessment systems.

S 22. The bank must periodically compare the results of its business environment and internal control factor assessments against the bank's actual operational risk loss experience.

S 23. The bank must have an operational risk quantification system that provides an estimate of the bank's operational risk exposure.

S 24. The bank's operational risk quantification system must use a combination of internal operational loss event data, relevant external operational loss event data, business environment and internal control factor assessments, and scenario analysis results. The bank should combine these elements in a manner that most effectively enables it to quantify its operational risk exposure. The bank should choose the analytical framework that is most appropriate to its business model.

S 25. The bank must review and update its operational risk quantification system whenever it

becomes aware of information that may have a material effect on the bank's estimate of operational risk exposure or risk-based capital requirement for operational risk, but no less frequently than annually. A complete review and recalculation of the bank's quantification system, including all modeling inputs and assumptions, must be done at least annually.

S 26. In calculating the risk-based capital requirement for operational risk, management may deduct certain eligible operational risk offsets from its estimate of operational risk exposure. To the extent that these offsets do not fully cover expected operational loss (EOL), the bank's risk-based capital requirement for operational risk must incorporate the shortfall. Eligible operational risk offsets may only be used to offset EOL, not UOL.

S 27. The bank must employ a unit of measure that is appropriate for the bank's range of business activities and the variety of operational loss events to which it is exposed, and that does not combine business activities or operational loss events with different risk profiles within the same loss distribution.

S 28. The bank may use internal estimates of dependence among operational losses within and across business lines and operational loss events if the bank can demonstrate to the satisfaction of its primary Federal supervisor that the bank's process for estimating dependence is sound, robust to a variety of scenarios, and implemented with integrity, and allows for uncertainty surrounding the estimates. If the bank has not made such a demonstration, it must sum operational risk exposure estimates across units of measures to calculate its total operational risk exposure.

S 29. The bank may adjust its operational risk exposure results by no more than 20 percent to reflect the impact of operational risk mitigants. In order to recognize the effects of risk mitigants, management must estimate its operational risk exposure with and without their effects.

S 30. The bank must document all material aspects of its AMA System. This documentation should include the rationale for the development, operation, and assumptions underpinning its chosen analytical framework, including the choice of inputs, distributional assumptions, and the weighting across qualitative and quantitative elements.

S 31. Banks using the AMA approach for regulatory capital purposes must have data management and maintenance systems that adequately support all aspects of an AMA System.

S 32. The bank must validate, on an ongoing basis, its AMA system. The bank's validation process must be independent of the AMA System's development, implementation, and operation, or the validation process must be subject to an independent review of its adequacy and effectiveness.

Appendix C—The NPR Qualification Process

Part III. Qualification

Section 21. Qualification Process [26]

(a) *Timing.* (1) A [bank] [27] that is described in paragraph (b)(1) of section 1 must adopt a written implementation plan no later than six months after the later of the effective date of this appendix or the date the [bank] meets a criterion in that section. The plan must incorporate an explicit first floor period start date no later than 36 months after the later of the effective date of this appendix or the date the [bank] meets at least one criterion under paragraph (b)(1) of section 1. [AGENCY] may extend the first floor period start date.

(2) A [bank] that elects to be subject to this appendix under paragraph (b)(2) of section 1 must adopt a written implementation plan and notify the [AGENCY] in writing of its intent at least 12 months before it proposes to begin its first floor period.

(b) *Implementation plan.* The [bank]'s implementation plan must address in detail how the [bank] complies, or plans to comply, with the qualification requirements in section 22. The [bank] also must maintain a comprehensive and sound planning and governance process to oversee the implementation efforts described in the plan. At a minimum, the plan must:

(1) Comprehensively address the qualification requirements in section 22 for the [bank] and each consolidated subsidiary (U.S. and foreign-based) of the [bank] with respect to all portfolios and exposures of the [bank] and each of its consolidated subsidiaries;

(2) Justify and support any proposed temporary or permanent exclusion of business lines, portfolios, or exposures from application of the advanced approaches in this appendix (which business lines, portfolios, and exposures must be, in the aggregate, immaterial to the [bank]);

(3) Include the [bank]'s self-assessment of:

(i) The [bank]'s current status in meeting the qualification requirements in section 22; and

(ii) The consistency of the [bank]'s current practices with the [AGENCY]'s supervisory guidance on the qualification requirements;

(4) Based on the [bank]'s self-assessment, identify and describe the areas in which the [bank] proposes to undertake additional work to comply with the qualification requirements in section 22 or to improve the consistency of the [bank]'s current practices with the [AGENCY]'s supervisory guidance on the qualification requirements (gap analysis);

(5) Describe what specific actions the [bank] will take to address the areas identified in the gap analysis required by paragraph (b)(4) of this section;

(6) Identify objective, measurable milestones, including delivery dates and a date when the [bank]'s implementation of the methodologies described in this appendix will be fully operational;

(7) Describe resources that have been budgeted and are available to implement the plan; and

(8) Receive board of directors approval.

(c) *Parallel run.* Before determining its risk-based capital requirements under this appendix and following adoption of the implementation plan, the [bank] must conduct a satisfactory parallel run. A satisfactory parallel run is a period of no less than four consecutive calendar quarters during which the [bank] complies with all of the qualification requirements in section 22 to the satisfaction of [AGENCY]. During the parallel run, the [bank] must report to the [AGENCY] on a calendar quarterly basis its risk-based capital ratios using [the general risk-based capital rules] and the risk-based capital requirements described in this appendix. During this period, the [bank] is subject to [the general risk-based capital rules].

(d) Approval to calculate risk-based capital requirements under this appendix. The [AGENCY] will notify the [bank] of the date that the [bank] may begin its first floor period following a determination by the [AGENCY] that:

(1) The [bank] fully complies with the qualification requirements in section 22;

[26] 71 FR 55921 through 55922 (Sept. 25, 2006).

[27] For simplicity, and unless otherwise noted, the NPR uses the term [bank] to include banks, savings associations, and bank holding companies. [AGENCY] refers to the primary Federal supervisor of the bank applying the rules. In addition, the text in Appendix C refers often to an 'appendix.' Use of 'appendix' within the text refers to where the NPR rule text will be inserted within each Agency's capital adequacy regulation. The 'appendix' is titled ''Capital Adequacy Guidelines for [Bank]s: Internal-Ratings-Based and Advanced Measurement Approaches.''

(2) The [bank] has conducted a satisfactory parallel run under paragraph (c) of this section; and

(3) The [bank] has an adequate process to ensure ongoing compliance with the qualification requirements in section 22.

(e) *Transitional floor periods.* Following a satisfactory parallel run, a [bank] is subject to three transitional floor periods.

(1) *Risk-based capital ratios during the transitional floor periods*—(i) *Tier 1 risk-based capital ratio.* During a [bank]'s transitional floor periods, a [bank]'s tier 1 risk-based capital ratio is equal to the lower of:

(A) The [bank]'s floor-adjusted tier 1 risk-based capital ratio; or

(B) The [bank]'s advanced approaches tier 1 risk-based capital ratio.

(ii) *Total risk-based capital ratio.* During a [bank]'s transitional floor periods, a [bank]'s total risk-based capital ratio is equal to the lower of:

(A) The [bank]'s floor-adjusted total risk-based capital ratio; or

(B) The [bank]'s advanced approaches total risk-based capital ratio.

(2) *Floor-adjusted risk-based capital ratios.* (i) A [bank]'s floor-adjusted tier 1 risk-based capital ratio during a transitional floor period is equal to the [bank]'s tier 1 capital as calculated under [the general risk-based capital rules], divided by the product of:

(A) The [bank]'s total risk-weighted assets as calculated under [the general risk-based capital rules]; and

(B) The appropriate transitional floor percentage in Table 1.

(ii) A [bank]'s floor-adjusted total risk-based capital ratio during a transitional floor period is equal to the sum of the [bank]'s tier 1 and tier 2 capital as calculated under [the general risk-based capital rules], divided by the product of:

(A) The [bank]'s total risk-weighted assets as calculated under [the general risk-based capital rules]; and

(B) The appropriate transitional floor percentage in Table 1.

(iii) A [bank] that meets the criteria in paragraph (b)(1) or (b)(2) of section 1 as of the effective date of this rule must use [the general risk-based capital rules] effective immediately before this rule became effective during the parallel run and as the basis for its transitional floors.

TABLE 1.—TRANSITIONAL FLOORS

Transitional floor period	Transitional floor percentage
First floor period	95
Second floor period	90
Third floor period	85

(3) *Advanced approaches risk-based capital ratios.* (i) A [bank]'s advanced approaches tier 1 risk-based capital ratio equals the [bank]'s tier 1 risk-based capital ratio as calculated under this appendix (other than this section on transitional floor periods).

(ii) A [bank]'s advanced approaches total risk-based capital ratio equals the [bank]'s total risk-based capital ratio as calculated under this appendix (other than this section on transitional floor periods).

(4) *Reporting.* During the transitional floor periods, a [bank] must report to the [AGENCY] on a calendar quarterly basis both floor-adjusted risk-based capital ratios and both advanced approaches risk-based capital ratios.

(5) *Exiting a transitional floor period.* A [bank] may not exit a transitional floor period until the [bank] has spent a minimum of four consecutive calendar quarters in the period and the [AGENCY] has determined that the [bank] may exit the floor period. The [AGENCY]'s determination will be based on an assessment of the [bank]'s ongoing compliance with the qualification requirements in section 22.

Appendix D—Basel II Operational Risk Information Collection Templates (Schedule V) [28]

BILLING CODES 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

[28] Notices of Proposed Rulemaking and Proposed Agency Information Collections—Requests for Comments were published in the **Federal Register** for comment on September 25, 2006 (71 FR 55981 through 55986). The Notices contained Basel II information collection templates, including a template for operational risk that is included in this Appendix.

Operational Risk - Schedule V

			A	Format
	PUBLIC			
	Operational Risk Capital			
1	Risk-based Capital Requirement for Operational Risk			Num
2	Is item 1 generated from an "alternative operational risk quantification system?"	y/n		Text
	Expected Operational Loss (EOL) and Eligible Operational Risk Offsets			
3	Expected Operational Loss (EOL)			Num
4	Total Eligible Operational Risk Offsets			
4a	Eligible GAAP reserves			Num
4b	Other eligible offsets			Num
	Total Risk-based Capital Requirement for Operational Risk without:			
5	Dependence assumptions			Num
6	Adjustments reflecting business environment and internal control factors			Num
7	Risk mitigants (e.g., insurance)			Num
	CONFIDENTIAL			
	Internal Operational Loss Data Characteristics			
8	Reporting dates			
8a	Starting date			Num
8b	Ending date			Num
9	Highest dollar threshold on loss data			Num
10	Does the dollar threshold change across units of measure?	y/n		Text

		A	B	Format
		Used in Modeling Op Risk Capital	**Total for Current Reporting Period**	
11	Total number of losses			Num
12	Total dollar amount of losses			Num
13	Dollar amount of largest loss			Num
14	Number of losses in the following ranges (e.g., ≥ $10,000 and < $100,000):			
14a	$10,000 - $100,000			Num
14b	$100,000 - $1 Million			Num
14c	$1 Million - $10 Million			Num
14d	$10 Million - $100 Million			Num
14e	$100 Million - $1 Billion			Num
14f	$1 Billion+			Num
15	Total dollar amount of losses in the following ranges (e.g., ≥ $10,000 and < $100,000):			
15a	$10,000 - $100,000			Num
15b	$100,000 - $1 Million			Num
15c	$1 Million - $10 Million			Num
15d	$10 Million - $100 Million			Num
15e	$100 Million - $1 Billion			Num
15f	$1 Billion+			Num
	Scenario Analysis			
16	How many individual scenarios were used in calculating the risk-based capital requirement for operational risk?			Num
17	What is the dollar value of the largest individual scenario?			Num
18	Number of scenarios in the following ranges (e.g., ≥ $1 Million and < $10 Million):			
18a	$1 Million - $10 Million			Num
18b	$10 Million - $100 Million			Num
18c	$100 Million - $500 Million			Num
18d	$500 Million - $1 Billion			Num
18e	$1 Billion+			Num
	Distributional Assumptions			
19	How many units of measure were used in calculating the risk-based capital requirement for operational risk?			Num
20	**Frequency Distribution**: Across how many individual units of measure did the choice of frequency distribution change since the last reporting period?			Num
21	**Severity Distribution**: Across how many individual units of measure did the choice of severity distribution change since the last reporting period?			Num
	Loss Caps			
22	How many loss caps are used in calculating the risk-based capital requirement for operational risk?			Num
23	What is the dollar amount of the smallest cap used?			Num
24	What is the dollar amount of the largest cap used?			Num

BILLING CODES 4810–33–C, 6210–01–C, 6714–01–C, 6720–01–C

OPERATIONAL RISK—DEFINITIONS

Business environment and internal control factors.	The indicators of a bank's operational risk profile that reflect a current and forward-looking assessment of the bank's underlying business risk factors and internal control environment.
Dependence	A measure of the association among operational losses across and within business lines and operational loss event types.
Eligible operational risk offsets	Amounts, not to exceed expected operational loss, that: (1) Are generated by internal business practices to absorb highly predictable and reasonably stable operational losses, including reserves calculated consistent with GAAP; and (2) are available to cover expected operational losses with a high degree of certainty over a one-year horizon.
Expected operational loss (EOL)	The expected value of the distribution of potential aggregate operational losses, as generated by the bank's operational risk quantification system using a one-year horizon.
Frequency distribution	Statistical distribution used to calculate the frequency of losses.
Operational loss event	An event that results in loss and is associated with internal fraud; external fraud; employment practices and workplace safety; clients, products, and business practices; damage to physical assets; business disruption and system failures; or execution, delivery, and process management.
Operational risk	The risk of loss resulting from inadequate or failed internal processes, people, and systems or from external events (including legal risk but excluding strategic and reputational risk).
Operational risk exposure	The 99.9th percentile of the distribution of potential aggregate operational losses, as generated by the bank's operational risk quantification system over a one-year horizon (and not incorporating eligible operational risk offsets or qualifying operational risk mitigants).
Risk mitigants (e.g., insurance)	A contractual arrangement whose primary purpose is to transfer risk to a third party.
Scenario analysis	A systematic process of obtaining expert opinions from business managers and risk management experts to derive reasoned assessments of the likelihood and loss impact of plausible high-severity operational losses.
Severity distribution	Statistical distribution used to calculate the severity of losses.
Unexpected operational loss (UOL)	The difference between the bank's operational risk exposure and the bank's expected operational loss.
Unit of measure	The level (for example, organizational unit or operational loss event type) at which the bank's operational risk quantification system generates a separate distribution of potential operational losses.

Appendix E—Operational Loss Event Types and Examples

Internal fraud	Employee theft, intentional misreporting of positions, and insider trading on an employee's own account.
External fraud	Robbery, forgery, and check kiting.
Employment practices and workplace safety	Workers' compensation and discrimination claims, violation of employee health and safety rules, and general liability.
Clients, products, and business practices	Fiduciary breaches, misuse of confidential customer information, money laundering, and sale of unauthorized products.
Damage to physical assets	Terrorism, vandalism, earthquakes, fires, and floods.
Business disruption and system failures	Hardware and software failures, telecommunication problems, and utility outages.
Execution, delivery, and process management	Data entry errors, collateral management failures, incomplete legal documentation, and vendor disputes.

Proposed Supervisory Guidance on the Supervisory Review Process (PILLAR 2).

1. This guidance supplements the notice of proposed rulemaking (NPR) published jointly by the U.S. Federal banking agencies [1] in the **Federal Register** on September 25, 2006.[2] The NPR proposes the implementation of a New Advanced Capital Adequacy Framework (U.S. Advanced Framework) encompassing three pillars:

- Minimum risk-based regulatory capital requirements (Pillar 1);
- Supervisory review (Pillar 2); and
- Market discipline through enhanced public disclosures (Pillar 3).

The regulatory capital requirements in Pillar 1 of the U.S. Advanced Framework would apply to credit risk and operational risk.[3]

2. This document addresses the process for supervisory review in the proposed U.S. Advanced Framework. Supervisory review as described in this guidance covers three main areas:

- Comprehensive supervisory assessment of capital adequacy;
- compliance with regulatory capital requirements;
- Internal capital adequacy assessment process (ICAAP).

[1] The Federal banking agencies are: The Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; the Office of the Comptroller of the Currency; and the Office of Thrift Supervision; and will collectively be referred to as ''the agencies,'' ''supervisors,'' or ''regulators'' in this guidance.

[2] 71 FR 55830 (Sept. 25, 2006).

[3] Some banks may be subject to both the U.S. Advanced Framework and the revised Market Risk Capital Rule, as published in the **Federal Register** on September 25, 2006 (71 FR 55958). If so, the requirement for banks to conduct an internal assessment of capital adequacy for market risk in the revised Market Risk Capital Rule could be satisfied by the requirement for banks to have a comprehensive internal capital adequacy assessment (covering all risk types) under the U.S. Advanced Framework. Additionally, banks subject only to the revised Market Risk Capital Rule would not need to conduct a comprehensive internal capital adequacy assessment covering all risk types, but only an internal assessment for market risk of covered positions as defined in the revised Market Risk Capital Rule.

3. The process of supervisory review described in this document reflects a continuation of the longstanding approach employed by the agencies in their supervision of banking institutions. However, the new methods proposed for calculating regulatory capital requirements in the U.S. Advanced Framework affect certain aspects of supervisory review. Thus, this guidance highlights areas of existing supervisory review that are being augmented or more clearly defined to support implementation of the U.S. Advanced Framework. It applies only to those banks calculating U.S. regulatory capital requirements under that framework, and not to banks calculating U.S. regulatory capital requirements by other means.[4]

4. The supervisory review process described in this document is intended to help ensure overall capital adequacy by:

- Confirming a bank's compliance with regulatory capital requirements;
- Addressing the limitations of regulatory capital requirements as a measure of a bank's full risk profile—including risks not covered or not adequately quantified;
- Encouraging banks to develop and use better techniques in identifying and measuring the risks they face; and
- Ensuring that each bank is able to assess its own individual capital adequacy (beyond regulatory capital requirements), based on its risk profile and business mix.

5. This guidance does not supersede or alter the functioning of the existing U.S. Prompt Corrective Action requirements.[5] This guidance also does not change requirements for compliance with existing regulations and supervisory standards related to risk management practices or other areas. The supervisory review process described in this guidance helps to support supervisors' ability to intervene when necessary to prevent an individual bank's capital from falling below the level required to support its risk profile.

Comprehensive Supervisory Assessment of Capital Adequacy

6. Capital helps protect individual banks from insolvency, thereby promoting safety and soundness in the overall U.S. banking system. Minimum regulatory capital requirements (Pillar 1 in the U.S. Advanced Framework) establish a threshold below which a sound bank's regulatory capital must not fall. Regulatory capital ratios permit some comparative analysis of capital adequacy across regulated institutions because they are based on certain common assumptions. However, supervisors must perform a more comprehensive assessment of capital adequacy that considers risks specific to the bank, conducting analyses that go beyond minimum regulatory capital requirements.

7. Supervisors generally expect banks to hold capital above their minimum regulatory capital levels, commensurate with their individual risk profiles, to account for all material risks. Going forward, supervisors will continue to assess the overall capital adequacy of any bank through a comprehensive evaluation that considers all relevant available information. In determining the extent to which banks should hold capital in excess of regulatory minimums, supervisors would consider the combined implications of a bank's compliance with qualification requirements for regulatory capital standards, the quality and results of a bank's ICAAP, and supervisory assessment of the bank's risk management processes, control structure, and other relevant information relating to the bank's risk profile and capital position. This supervisory assessment process is consistent with current supervisory practice, under which supervisors assess the overall capital adequacy of a bank through a comprehensive evaluation of all relevant information.

8. On an ongoing basis, the supervisory assessment process determines whether a bank's overall capital remains adequate as underlying conditions change. Changes in a bank's risk profile or in relevant capital measures are areas of particular focus that are effectively addressed through the supervisory review process. Generally, material increases in risk that are not otherwise mitigated should be accompanied by commensurate increases in capital. Conversely, reductions in overall capital (to a level still above regulatory minimums) may be appropriate if the supervisory assessment provides support to conclude that risk has materially declined or that it has been appropriately mitigated.

9. As a result of its comprehensive supervisory assessment, a bank's primary Federal supervisor may take action if it is not satisfied that capital is adequate. The primary supervisor may require the bank to take actions designed to address identified supervisory concerns, which may include holding an amount of capital greater than otherwise would be required. In addition, a primary supervisor may, under its enforcement authority, require a bank to modify or enhance risk management and internal control processes, or reduce risk exposures, or take any other action as deemed necessary to address identified supervisory concerns.

Compliance With Regulatory Capital Requirements

10. In order to qualify under the U.S. Advanced Framework to use new methods for calculating regulatory capital requirements, banks must meet certain process and systems requirements. Supervisors must ensure that banks are indeed meeting these requirements. Thus, one aspect of supervisory review pertains to the evaluation of a bank's compliance with the qualification requirements for the systems and processes to be used in the calculation of regulatory capital under the U.S. Advanced Framework. The supervisory guidance regarding the U.S. Advanced Framework provides a detailed explanation of these qualification requirements for the systems and processes for the calculation of regulatory capital.

11. Banks adopting the U.S. Advanced Framework must comply with the qualification requirements not just for initial qualification, but also for ongoing use. A bank that falls out of compliance with the qualification requirements would be required to establish a plan satisfactory to its primary Federal supervisor to return to compliance, as discussed in the U.S. Advanced Framework.

12. Supervisors will ensure that each bank using the U.S. Advanced Framework complies with the qualifying requirements for calculating regulatory capital, both at the consolidated level and at any U.S. subsidiary banks also subject to the U.S. Advanced Framework. Thus, each bank applying the U.S. Advanced Framework must have appropriate risk measurement and management processes and systems that meet the rule's qualification requirements for calculating regulatory capital.

ICAAP

13. The qualification requirements in the U.S. Advanced Framework state that ''a bank must have a rigorous process for assessing its overall capital adequacy in relation to its risk profile and a

[4] The term ''bank'' as used in this guidance includes banks, savings associations and bank holding companies. The terms ''bank holding company'' and ''BHC'' refer only to bank holding companies regulated by the Federal Reserve Board and do not include savings and loan holding companies regulated by the Office of Thrift Supervision.

[5] See section 38 of the Federal Deposit Insurance Act (12 U.S.c. 1831o).

comprehensive strategy for maintaining an appropriate level of capital.''[6] A bank's internal process for assessing its overall capital adequacy, the ICAAP, must be conducted by a bank in addition to its calculation of regulatory capital requirements.[7]

14. The fundamental objectives of a sound ICAAP are:

- Identifying and measuring material risks;
- Setting and assessing internal capital adequacy goals that relate directly to risk;
- Ensuring the integrity of internal capital adequacy assessments.

15. Assessing overall capital adequacy through the ICAAP requires thorough identification of all material risks, measurement of those that can be reliably quantified, and systematic assessment of all risks and their implications for capital adequacy. In this manner, an ICAAP should contribute broadly to the development of better risk management within the organization at both the individual entity and consolidated levels.

16. Each bank that uses the U.S. Advanced Framework should have an ICAAP appropriate for its unique risk characteristics and should not rely solely upon the assessment of capital adequacy at the parent company level. This does not preclude the use of a consolidated ICAAP as an important input to a subsidiary bank's own ICAAP, provided that each entity's board and senior management ensure that such processes are appropriately modified from the consolidated ICAAP to address the unique structural and operating characteristics and risks of their bank.

17. In general, the ICAAP will likely go beyond the restrictive or simplifying assumptions in regulatory requirements. However, in certain instances the ICAAP may build on and utilize methods, practices, and results from a bank's work for determining regulatory capital requirements. For example, an ICAAP may use data, ratings, or estimates from internal ratings-based approaches to credit risk. Furthermore, while an ICAAP should generally be a distinct and comprehensive process that produces its own capital measures, in some cases banks may be able to justify that regulatory capital measures are appropriate for internal use and reflect the bank's risk profile.

18. The design and operation of systems to meet the ICAAP requirement will necessarily differ based upon the complexity of each bank's operations and risk profile. Many banks currently employ ''economic capital'' measures for some elements of risk management, such as, limit setting, or for evaluating performance and determining aggregate capital adequacy needs.[8] In some cases, economic capital measures may relate directly to ICAAP requirements; in other cases, banks may be using economic capital measures that do not relate directly to ICAAP requirements. For the latter, a bank does not necessarily need to change its existing process or systems, but may build upon or reconcile its economic capital process in relation to the ICAAP requirement to demonstrate how the two are generally related. Regardless of the specific implementation method(s) chosen, a bank's overall ICAAP should address the three ICAAP objectives stated in paragraph 14.

Identifying and Measuring Material Risks in ICAAP

19. The first objective of an ICAAP is to identify all material risks. Risks that can be reliably measured and quantified should be treated as rigorously as data and methods allow. The appropriate means and methods to measure and quantify those material risks are likely to vary across banks.

20. Some of the risks to which banks are exposed include credit risk, market risk, operational risk, interest rate risk in the banking book, and liquidity risk (as outlined below).[9] However, other risks, such as reputational risk, business or strategic risk, and country risk may be as important for a bank and, in such cases, should be given equal consideration to the more formally defined risk types.[10] Additionally, if banks employ risk mitigation techniques, they should understand the risk to be mitigated and the potential effects of that mitigation (including its enforceability and effectiveness).

- Credit risk: A bank should have the ability to assess credit risk at the portfolio level as well as at the exposure or counterparty level. Banks should be particularly attentive to identifying credit risk concentrations and ensuring that their effects are adequately assessed. This should include consideration of various types of dependence among exposures, incorporating the credit risk effects of extreme outcomes, stress events, and shocks to assumptions about portfolio and exposure behavior. Banks should also carefully assess concentrations in counterparty credit exposures, including counterparty credit risk exposures emanating from trading in less liquid markets, and determine the effect that these might have on capital adequacy.
- Market risk: A bank should be able to identify risks in trading activities resulting from a movement in market prices. This determination should consider factors such as illiquidity of instruments, concentrated positions, one-way markets, non-linear/deep out-of-the money positions, and the potential for significant shifts in correlations. Exercises that incorporate extreme events and shocks should also be tailored to capture key portfolio vulnerabilities.
- Operational risk: A bank should be able to assess the potential risks resulting from inadequate or failed internal processes, people, and systems, as well as from events external to the bank. This assessment should include the effects of extreme events and shocks relating to operational risk. Events could include a sudden increase in failed processes across business units or a significant incidence of failed internal controls.
- Interest rate risk in the banking book: A bank should identify the risks associated with changing interest rates on balance sheet and off-balance sheet exposures in the banking book from both a short-term and long-term perspective. This might include the impact of changes due to parallel shocks, yield curve twists, yield curve inversions, changes in the relationships of rates (basis risk), and other relevant scenarios. The bank should be able to support its assumptions about the behavioral characteristics of servicing rights, non-maturity deposits and other

[6] Part III, section 22 (a) (1) of the U.S. Advanced Framework.

[7] Should the primary Federal supervisor exempt a bank from the application of the U.S. Advanced Framework based upon a written determination that the application of the rule is not appropriate in light of the bank's asset size, level of complexity, risk profile, or scope of operations, such exemption would likewise apply to the requirement that the bank have an ICAAP in the U.S. Advanced Framework.

[8] The term ''economic capital'' generally refers to the capital attributed to cover the economic effects of an institution's risk taking activities. In practice, economic capital takes on a variety of definitions and is applied in a number of ways at the product, business-line, and consolidated institution level.

[9] Examination policies and procedures from each agency provide extensive guidance on the major risk categories. A bank's risk management processes, including its ICAAP, should be consistent with this existing body of guidance, as well as with relevant interagency guidance.

[10] For example, a bank may be engaged in businesses for which periodic fluctuations in activity levels, combined with relatively high fixed costs, have the potential to create unanticipated losses that must be supported by adequate capital. Additionally, a bank might be involved in strategic activities (such as expanding business lines or engaging in acquisitions) that introduce significant elements of risk and for which additional capital would be appropriate.

assets and liabilities, especially those exposures characterized by embedded optionality. Given uncertainty in such assumptions, stress testing and scenario analysis should be used in the analysis of interest rate risks.

• Liquidity risk: A bank should understand risks resulting from its inability to meet its obligations as they come due, because of difficulty in liquidating assets or in obtaining adequate funding. This assessment should include analysis of sources and uses of funds, an understanding of the funding markets in which the bank operates, and an assessment of the efficacy of a contingency funding plan for events that could arise.

The risk factors discussed above should not be considered an exhaustive list of those affecting any given bank. All relevant factors that present a material source of risk to capital should be incorporated in a well-developed ICAAP. Furthermore, banks should be mindful of the capital adequacy effects of concentrations that may arise within each risk type.

21. All measurements of risk incorporate both quantitative and qualitative elements, but generally a quantitative approach should form the foundation of a bank's measurement framework. In some cases, quantitative tools can include the use of large historical databases; when data are more scarce, a bank may choose to rely more heavily on the use of stress testing and scenario analyses. Banks should understand when measuring risks that measurement error always exists, and in many cases is, itself, difficult to quantify. In general, an increase in uncertainty related to modeling and business complexity should result in a larger capital cushion.

22. Quantitative approaches that focus on most likely outcomes for budgeting, forecasting, or performance measurement purposes may not be fully applicable for capital adequacy because the ICAAP should also take less likely events into account. Stress testing and scenario analysis can be effective in gauging the consequences of outcomes that are unlikely but would have a considerable impact on safety and soundness.

23. To the extent that risks cannot be reliably measured with quantitative tools—for example, where measurements of risk are based on scarce data or unproven quantitative methods—qualitative tools, including experience and judgment, may be more heavily utilized. Banks should be cognizant that qualitative approaches have their own inherent biases and assumptions that affect risk assessment; accordingly, banks should recognize the biases and assumptions embedded in, and the limitations of, the qualitative approaches used.

24. An effective ICAAP should assess risks across the entire bank. A bank choosing to conduct risk aggregation among various risk types or business lines should understand the challenges in such aggregation. In addition, when aggregating risks, banks should be sure to address any potential concentrations across more than one risk dimension, recognizing that losses could arise in several risk dimensions at the same time, stemming from the same event or a common set of factors. For example, a localized natural disaster could generate losses from credit, market, and operational risks at the same time.

25. In considering possible effects of diversification, management should be systematic and rigorous in documenting decisions, and in identifying assumptions used in each level of risk aggregation. Assumptions about diversification should be supported by analysis and evidence. The bank should have systems capable of aggregating risks based on the bank's selected framework. For example, a bank calculating correlations within or among risk types should consider data quality and consistency, and the volatility of correlations over time and under stressed market conditions.

Setting and Assessing Capital Adequacy Goals That Relate to Risk

26. The second objective of an ICAAP is to set and assess capital adequacy goals in relation to all material risks. Importantly, banks should recognize that regulatory capital requirements represent a floor below which a bank's overall capital level must not fall, even if bank management believes that there is justification for a lower overall level.

27. Assessments of risk and capital adequacy should reflect the risk appetite of the bank. This appetite may be expressed through an established risk tolerance that generally reflects a desired level of risk coverage and/or a certain degree of creditworthiness, such as an explicit solvency standard. Because risk profiles and choices of risk tolerance may differ across banks, chosen capital targets may also differ.

28. Actual capital held should reflect not only the measured amount of risk, but also potential uncertainties related to the measurement of risk. In addressing concerns about how limitations of risk measurement affect capital adequacy, banks should pay particular attention to the relative importance to the bank of the activities producing the risk. In their assessment of capital adequacy, banks should challenge fundamental assumptions embedded in the measurement of risks; in certain cases, assumptions that were accurate during one historical time period may no longer be valid and may lead to mismeasurement or misunderstanding of risks and/or the capital needed to support them. Banks should be explicitly aware of how sensitive their risk measurements are to various input assumptions.

29. A bank should consider external conditions and other factors that influence overall capital adequacy. The potential impact of contingent exposures and changing economic and financial environments should be addressed; such analysis can include stress testing or scenario analysis, but in all cases should incorporate both quantitative and qualitative methods.[11]

30. A bank's ICAAP should ensure adequate capital is held against all material risks not just at a point in time, but over time, in order to account for inevitable changes in a bank's strategic direction, evolving economic conditions, and volatility in the financial environment. Indeed, sensitivity of capital to economic and financial cycles is an important feature to be included in a bank's planning for current and future capital needs. For example, a bank's ICAAP should consider the potential effects of a sudden, sustained downturn. The level of capital deemed adequate by an ICAAP might also be influenced by a bank's intention to hold additional capital to mitigate the impact of volatility in capital requirements, the need to accommodate acquisition plans, or the decision to accommodate market perceptions of capital adequacy and their impact on funding costs.

31. Various definitions of bank capital are used within banking. A bank should state clearly the definition of capital used in any aspect of its ICAAP. For example, the definition used in models to measure capital adequacy relative to risk may not correspond to capital actually held (available capital resources), and the bank should understand such differences. For internal purposes, some banks may choose a narrow capital definition, such

[11] The use of stress testing and scenario analysis in identifying and measuring risk exposures and assessing capital adequacy in an ICAAP is not the same as the stress testing requirement related to minimum regulatory capital requirements (as described in the U.S. Advanced Framework and supervisory guidance relating to qualification requirements). The stress testing and scenario analysis encouraged in the ICAAP guidance is intended to focus on overall capital needs and their possible fluctuations—not just fluctuations in minimum regulatory capital requirements.

as only common equity, while others may define capital more broadly. Banks should also state explicitly the impact that retained earnings have on capital positions. Since components of capital are not necessarily alike and have varying ability to absorb losses, a bank should thoroughly understand the relationship between its internal capital definition and its assessment of capital adequacy. The bank should document any changes in its internal definition of capital, and the reason for those changes.

32. For effective capital planning, banks should identify the time horizon over which they are assessing capital adequacy. Banks should evaluate whether long-run capital targets are consistent with short-run goals, based on current and planned changes in risk profiles and the recognition that accommodating additional capital needs can require significant lead time. Capital planning should factor in the potential difficulties of raising additional capital during downturns or other times of stress. Banks should have contingency plans to address unexpected capital needs or liquidity/funding issues.

Ensuring Integrity of Internal Capital Adequacy Assessments

33. A satisfactory ICAAP comprises a complete process with proper oversight and controls, not just an ability to carry out certain capital calculations. The various elements of a bank's ICAAP should supplement and reinforce one another to achieve the overall objective of assessing the adequacy of the bank's actual capital resources, taking into account the full risk profile.

34. Adequate internal controls and documentation should be in place to ensure transparency, objectivity, and consistency in an ICAAP. Decisions regarding the design and operation of the ICAAP should reflect sound risk management objectives, and should not be unduly influenced by competing business objectives. Principles underlying a bank's ICAAP should be incorporated in policies that are reviewed and approved at appropriate levels within the organization.

35. Banks should have complete documentation covering the ICAAP. At a minimum, such documentation should include a description of the overall process, including committees and individuals responsible for the ICAAP, the frequency of ICAAP-related reporting, and procedures for the periodic evaluation of the appropriateness and adequacy of ICAAP. In addition, where applicable, documentation should cover all aspects ordinarily expected for sound use of quantitative methods, including model selection, limitations, data selection and maintenance, controls, and validation.

36. An ICAAP should be enhanced and refined over time, with learning and experience (both quantitative and qualitative) contributing to its improvement. It should evolve with changes in the risk profile and activities of the bank as well as advances in risk measurement and management practices. Special attention may be necessary for areas where the operational or business environment has changed, such as the introduction of new products and activities.

37. The board of directors and senior management have certain responsibilities in developing, implementing, and overseeing an ICAAP. The board or its appropriately delegated agent should approve the ICAAP and its components, review them on a regular basis, and approve any revisions. That review should encompass the effectiveness of the ICAAP, the appropriateness of risk tolerance levels and capital planning, and the strength of control infrastructures. Senior management should continually ensure that the ICAAP is functioning effectively and as intended; considerations by senior management should be explicit, formal, and documented. Additionally, internal audit should play a key role in the controls and governance surrounding an ICAAP on an ongoing basis.

38. Each bank should ensure that the components of its ICAAP, including any models and their inputs, are subject to validation policies and procedures. Validation is generally defined as an ongoing process that encompasses, but is not limited to, the collection and review of developmental evidence, process verification, benchmarking, outcomes analysis, and monitoring activities used to confirm that processes are operating as designed. The sophistication of validation policies and procedures should be appropriate to the bank's business, structure, and sophistication, as well as the relative importance of each component of ICAAP. In conducting validation, banks should adhere to the existing body of supervisory guidance on the subject.

39. The primary use of an ICAAP is to provide an assessment of internal capital adequacy. Beyond that, management should be able to demonstrate that the ICAAP influences business decisions and overall risk management, and is not simply a compliance exercise. An ICAAP should influence decision-making at both the consolidated and individual business-line levels.

40. An ICAAP should, to the extent possible, be integrated with other management processes related to risk assessment, business planning and forecasting, pricing strategies and performance measurement. Additionally, the components of an ICAAP, including models and their inputs, should be used in (or at the very least be consistent with elements used in) regular business and risk management decisions.

41. As part of the ICAAP, the board or its delegated agent, as well as appropriate senior management, should periodically review the resulting assessment of overall capital adequacy and determine that actual capital held is consistent with the risk appetite of the bank, taking into account all material risks. This review should include an analysis of how measures of internal capital adequacy compare with other capital measures (such as regulatory, accounting-based or market-determined). The review should also result in formal procedures to correct any deficiencies uncovered in the assessment process, especially if capital is not consistent with the risk profile or risk appetite of the bank.

Dated: February 12, 2007.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Dated: February 13, 2007.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, the 15th day of February, 2007.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: February 15, 2007.

By the Office of Thrift Supervision,

John M. Reich,

Director.

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Part III

Department of Commerce

Patent and Trademark Office

37 CFR Part 11

Changes to Representation of Others Before the United States Patent and Trademark Office; Proposed Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 11

[Docket No.: PTO–C–2005–0013]

RIN 0651–AB55

Changes to Representation of Others Before the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Supplemental Notice of Proposed Rule Making.

SUMMARY: In December 2003, the United States Patent and Trademark Office (Office) proposed amendments to, *inter alia*, the rules governing disciplinary proceedings for attorneys and agents who practice before the Office, principally rules 11.2, 11.3, 11.5, and 11.14 through 11.62. One hundred fifty-seven written comments were received. After reviewing the written comments, the Office has decided to revise several of the rules as then proposed and request additional comments on those revised proposals. Other proposed rules contained in the earlier Notice of Proposed Rule making remain under consideration by the Office. This supplemental notice of proposed rule making sets forth revisions that the Office is proposing to the rules governing the conduct of investigations and disciplinary proceedings. Interested individuals are invited to comment on the proposed revisions in the rules.

DATES: To be ensured of consideration, written comments must be received on or before May 29, 2007.

ADDRESSES: The Office seeks comments regarding the proposed revisions set forth in the proposed rules. Comments should be sent by electronic mail message over the Internet addressed to: *ethicsrules.comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop OED-Ethics Rules, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450 or by facsimile to (571) 273–4097, marked to the attention of Harry I. Moatz. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of Enrollment and Discipline, located in Madison East, Eighth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Office Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Harry I. Moatz (571) 272–6069), Director of Enrollment and Discipline (OED Director), directly by phone, by facsimile to (571) 273–6069 marked to the attention of Mr. Moatz, or by mail addressed to: Mail Stop OED-Ethics Rules, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

SUPPLEMENTARY INFORMATION: On December 12, 2003, the Office published a proposed rule in the **Federal Register** (68 FR 69441) amending parts 1 and 2 of the rules and procedures governing patent and trademark prosecution (Title 37 of the Code of Federal Regulations), reserving part 10 and introducing part 11. Included in the proposed rules for part 11 were rules governing the conduct of investigations and disciplinary proceedings. Many of the proposed investigation and disciplinary procedural rules were in many ways similar to the approach of the current regulations. Other proposed rules were intended to introduce new disciplinary procedures for practitioners who have been suspended or disbarred in other disciplinary jurisdictions for ethical or professional misconduct, practitioners convicted of serious crimes, and practitioners having disability issues.

The December 12, 2003 Notice also proposed changes to the ethics rules governing the conduct of recognized patent practitioners and others practicing before the Office as well as rules governing enrollment of recognized practitioners. The provisions on enrollment were adopted in final rules on July 26, 2004, 69 FR 35428. Comments on proposed changes to the substantive ethics rules remain under consideration by the Office. The current notice does not address those proposed rules.

In addition, several proposed rules referenced are directly or indirectly dependent on the development of electronic systems to implement rules governing annual dues, § 11.8, and continuing legal education. For example, §§ 11.8(d), 11.12, and 11.13 are directly dependent on development of the systems, whereas § 11.11(b) is indirectly dependent on the development. Further consideration of rules dependent on implementing electronic systems awaits completion of the development and implementation of the systems. Accordingly, the revised rules proposed below do not refer to rules that depend on implementing electronic systems, and no comments are invited regarding the omitted referrals.

A detailed analysis is not included herein of the differences between the rules proposed in December 2003 (proposed rules) and the revised rules currently proposed (revised proposed sections). A comparison of the proposed rules and the revised proposed sections is being made available on the Internet at *http://www.uspto.gov/web/offices/dcom/olia/oed/comparison_ab55.pdf.*

Comments are sought regarding the revised proposed sections that introduce significant procedural or substantive changes. *The following revised proposed sections are believed to be those introducing such changes:* 11.2, 11.5, 11.18 through 11.22, 11.24 through 11.26, 11.28, 11.44, 11.45, and 11.52. This supplemental notice includes other revised proposed sections (sections 11.1 (definition of State), 11.3, 11.14, 11.15, 11.23, 11.27, 11.29, 11.33 through 11.36, 11.38 through 11.41, 11.43, 11.50, 11.51, and 11.54 through 11.61) that are not believed to contain significant procedural or substantive changes from the December 12, 2003 notice; proposed rules that have not been revised (11.29 through 11.31, 11.37, 11.42, 11.46 through 11.49, 11.53, and 11.63 through 11.99); and two proposed rules that, as revised, have been reserved (11.16 and 11.62). The latter three groups of rules have been included to provide both context and perspective for the revised proposed sections that contain significant changes. The table below is included to assist readers in correlating the revised proposed sections with the present rules. While it is believed that further comments are unnecessary regarding rules that have not been revised at all or whose revisions are not significantly changed in procedure or substance, comments may nevertheless be submitted.

TABLE—CONCORDANCE OF SECTIONS 11.14 THROUGH 11.99 WITH PART 10 AND CURRENT PART 11

Section	Part 10 and Part 11 concordance
11.1	New definition of State.

TABLE—CONCORDANCE OF SECTIONS 11.14 THROUGH 11.99 WITH PART 10 AND CURRENT PART 11—Continued

Section	Part 10 and Part 11 concordance
11.2	37 CFR 11.2(a), (b)(4), (c) and (d) changes in language; Subsections 11.2(b)(5), (b)(6) and (e) are new.
11.3	37 CFR 10.170, changes in language.
11.5	37 CFR 10.5, Subsection (b) is new.
11.14	37 CFR 10.14, changes in language; Subsection 11.14(f) is new.
11.15	37 CFR 10.15.
11.16–11.17 [Reserved]	37 CFR 10.16–10.17.
11.18	37 CFR 10.18, changes in language.
11.19	37 CFR 10.1 and 10.130(b), changes in language; Subsections 11.19(b) and (d) are new.
11.20	New.
11.21	New.
11.22	New.
11.23	37 CFR 10.4, changes in language.
11.24	New.
11.25	New.
11.26	37 CFR 10.133(g), changes in language.
11.27	37 CFR 10.133(b) through (g), changes in language.
11.28	New.
11.29–11.31 [Reserved]	New.
11.32	37 CFR 10.132, changes in language.
11.33 [Reserved]	New.
11.34	37 CFR 10.134, changes in language; Subsection 11.134(c) is new.
11.35	37 CFR 10.135, changes in language; Subsection 11.135(a)(4) is new.
11.36	37 CFR 10.136, changes in language; Subsection 11.36(e) is new.
11.37 [Reserved]	New.
11.38	37 CFR 10.138, changes in language.
11.39	37 CFR 10.139, changes in language; Subsections 11.39(b) and (g) are new.
11.40	37 CFR 10.140, changes in language.
11.41	37 CFR 10.141, changes in language.
11.42	37 CFR 10.142.
11.43	37 CFR 10.143, changes in language.
11.44	37 CFR 10.144, changes in language.
11.45	37 CFR 10.145, changes in language and new.
11.46–11.48 [Reserved]	37 CFR 10.146–10.148.
11.49	37 CFR 10.149.
11.50	37 CFR 10.150, changes in language.
11.51	37 CFR 10.151, changes in language.
11.52	37 CFR 10.152, changes in language.
11.53	37 CFR 10.153.
11.54	37 CFR 10.154, changes in language.
11.55	37 CFR 10.155, changes in language; Subsections 11.155(b) through (g) are new.
11.56	37 CFR 10.156, changes in language.
11.57	37 CFR 10.157, changes in language.
11.58	37 CFR 10.158, changes in language, Subsection 11.158(d) is new.
11.59	37 CFR 10.159, changes in language, Subsection 11.159(c) is new.
11.60	37 CFR 10.160, changes in language, Subsections 11.160(d) through (f) are new.
11.61	37 CFR 10.61, changes in language; Subsections 11.161(c) and (d) are new.
11.62–11.99 [Reserved]	New.

Comments regarding proposed rules 11.100 through 11.900 remain under consideration. The Office expects to publish a separate supplemental notice of proposed rule making containing proposed revisions to 11.100 through 11.900 and request comments.

In response to the proposed rule making published December 12, 2003, the Office received one hundred fifty-seven communications with comments, including comments from seventeen organizations, thirteen law firms, seven businesses, one hundred fifteen individuals, and four anonymous sources.

This notice will address only comments concerning the procedural aspects of the earlier proposed rules. It will not address questions concerning the scope or substance of the Office's practitioner ethics program, which it is expected will be the subject of a separate notice. The Office has given full consideration to each and every public comment submitted during the comment period. The Office has revised proposed sections contained herein to retain and clarify, *inter alia,* the OED Director's authority and responsibility for investigations and prosecuting disciplinary matters. The revised proposed sections clarify (1) procedures whereby the OED Director may conduct investigations, (2) consequences for violating § 11.18(b)(2), (3) the disciplinary jurisdiction of the Office, (4) procedures for reciprocal discipline of practitioners who have been suspended or disbarred for ethical or professional misconduct in other jurisdictions, (5) procedures for disciplining practitioners convicted of a serious crime, and (6) procedures for practitioners to raise their own disability issues.

The revised proposed sections eliminate or introduce substantive and procedural changes to the proposed rules. Many revisions were not suggested by the comments. Accordingly, this notice will not address each comment. Instead, the chief comments pertaining to the revisions are addressed herein.

Congress has granted express authority to the Office to ''establish regulations, not inconsistent with law, which * * * may govern the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office.'' 35 U.S.C. 2(b)(2)(D). Congress also provided that the ''Director may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent and Trademark Office, * * * any * * * agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 2(b)(2)(D) of this title, or who shall, by word, circular, letter, or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant, or other person having immediate or prospective business before the Office. The reasons for any such suspension or exclusion shall be duly recorded.'' 35 U.S.C. 32. In so doing, Congress vested express and implied authority with the Office to prescribe rules of procedure that are applicable to practitioners recognized to practice before the Office.

The primary purposes for adopting procedures for disciplining practitioners who fail to conform to adopted standards include affording practitioners due process, protecting the public, preserving the integrity of the Office, and maintaining high professional standards.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 11, is proposed to be amended as follows:

Section 11.1: The definition of state would be revised to clarify that state includes Commonwealths and territories of the United States, as well as the fifty states and the District of Columbia. Thus, the ''court of * * * any state'' in § 11.25(a) would include any courts of the fifty states, the District of Columbia, and Commonwealths and territories of the United States.

Section 11.2: Section 11.2 provides for the appointment and duties of the Director of Enrollment and Discipline (OED Director), as well as petitions for review of decisions of the OED Director. The duties have been revised to clarify that investigations are conducted in matters involving possible grounds for discipline, as opposed to specifying particular violations that would be subject to investigation. The duties are further revised to require the OED Director to provide practitioners with an opportunity to respond to a reasonable inquiry by the OED Director. The OED Director will make reasonable requests for information and documents to efficiently and effectively ascertain whether grounds for discipline exist.

The revised proposed section also separates petitions to review the OED Director's decisions in disciplinary matters from petitions in enrollment matters. Subsections 11.2(c) and (d) would be limited to petitions regarding enrollment and recognition. The Office is proposing a specific procedure for petitioning to invoke the supervisory authority of the USPTO Director in disciplinary matters in subsection (e). The procedure in subsection (e) is comparable to the supervisory review procedure in § 1.181 and assures supervisory review when appropriate.

Section 11.3: Section 11.3, which provides for suspension of rules, has been revised to eliminate a prohibition in proposed rule 11.3(b) against petitioning to waive a disciplinary rule. However, elimination of the prohibition should not be construed as an indication that there could be any extraordinary situation when justice requires waiver of a disciplinary rule. The revised proposed section also eliminates the provisions in proposed rule 11.3(d) for qualified privilege for complaints submitted to the OED Director or any other official of the Office and for immunity for Office employees from disciplinary complaint under Part 11 for any conduct in the course of their official duties.

Section 11.5: The provisions of the sole paragraph of § 11.5 adopted in the final rules on July 26, 2004, would be renumbered as § 11.5(a). Revised subsection 11.5(b) defines practice before the Office. Commentators urged that Congressional approval is needed to define practice before the Office. Authority to govern conduct implicitly includes authorization to recognize activities constituting practice before the Office. The Internal Revenue Service (IRS), citing as authority the provisions in, *inter alia,* 31 U.S.C. 330, defined practice before that agency. The language of § 330(b) and 35 U.S.C. 32 are comparable. Section 330(b) provides ''[a]fter notice and opportunity for a proceeding, the Secretary may suspend or disbar from practice before the Department a representative who—(1) is incompetent; (2) is disreputable; (3) violates regulations prescribed under this section; or (4) with intent to defraud, willfully and knowingly misleads or threatens the person being represented or a prospective person to be represented.'' The relevant language of § 32 is quoted above. Congressional approval to define practice is implicit in these comparable provisions. Accordingly, it is appropriate that the Office define practice before the Office. Revised proposed § 11.5(b) covers all areas of law practiced before the Office. This definition tracks the definition of ''practice'' adopted by the IRS. See 26 CFR 601.501(b)(10) and 31 CFR 10.2(d). The definition addresses law-related services that comprehend all matters presented to the Office relating to a client's rights, privileges, duties and responsibilities under the laws and regulations administered by the Office.

Commentators also expressed concern as to whether practice before the Office was defined too broadly by including participation in drafting applications and including activities ''incident to the preparation and prosecution of patent applications before the Patent Office.'' The Office does not seek to expand its jurisdiction. Accordingly, ''participation'' in drafting applications and activities ''incident to the preparation and prosecution of patent applications before the Patent Office'' are no longer included in the definition. However, the Office has authority to inform registered practitioners whether activities are covered by their registration to practice before the Office. For example, drafting patent applications would continue to be practice before the Office. The revised proposed sections indicate that a registered practitioner must be able to provide clients with advice about relying upon alternative forms of protection that may be available under State law. The revised proposed section indicates that registered practitioners may use nonpractitioners to conduct many of the activities associated with practice before the Office, such as drafting patent applications, provided they work under the supervision of the registered practitioner. The rule permits the more than 30,000 registered patent practitioners to employ non-practitioners to assist practitioners in providing cost-efficient services to clients. It also permits every attorney practicing before the Office in trademark cases to provide cost-efficient services. Thus, practitioners may provide their legal services at lower fees, a result favored by the Office and practitioners. The revised proposed section also recognizes that attorneys representing persons in enrollment and disciplinary matters are engaged in practice before the Office.

But for limited situations noted below, a registered patent agent is not authorized by his or her registration to practice before the Office to draw up a contract or to select contract forms for a client relating to a patent, such as an assignment or a license, if the state in which the agent resides or practices considers drafting contracts the practice of law. Assignments and licenses are the creation of state, not federal, statutory law. Although 35 U.S.C. 152, 202, 204 and 261 refer to assignment or licensure of patents or patent rights, assignments and licenses are forms of contracts, which are creatures of state, not federal law. Contracts are enforceable under state law. The authority to prepare contracts and provide advice regarding the terms to include in contracts is subject to the state law regarding who is authorized to practice law. In contrast, submission for recordation of assignments and licenses is a ministerial act that does not require legal training. It has been the long-standing position of the Office that a registered patent agent may prepare a patent assignment or license if not prohibited by state law, and an agent may submit the assignment or license for recordation.

The Office solicits comment on whether it should explicitly provide for circumstances in which a patent agent's causing an assignment to be executed might be appropriate incidental to preparing and filing an application. For example, execution of a standard assignment document may be incidental to filing an application where the inventor is an employee of an organization, such as a corporation or partnership, and signed an agreement to assign inventions to the organization. It

would be also consistent with the law in some states for a registered patent agent who is a regular (salaried) employee of the organization acting for his or her employer to undertake to prepare assignments only for the employer. If commentators propose that the Office should provide for such situations, they should attempt to articulate standards by which actions strictly incidental to an agent's duties in preparing applications can be distinguished from actions necessitating expert knowledge of state principles for which registered practitioner status does not prepare agents.

The provision in proposed rule 11.5(b)(3) regarding a practitioner's conduct occurring in a non-practitioner capacity has been withdrawn as being unnecessary. Misconduct occurring in a non-lawyer or non-agent capacity would be covered by the provisions of revised proposed § 11.19, which identify several grounds for discipline, including, but not limited to, conduct that violates an imperative USPTO Rule of Professional Conduct and a conviction of a serious crime.

Section 11.16: Proposed rule 11.16, regarding financial books and records, has been withdrawn. As revised, § 11.16 would be reserved. Requests for financial records during investigations are addressed *infra* under § 11.22.

Section 11.18: Section 11.18(b) provides that a practitioner certifies the truthfulness of the content of his or her submissions to the Office. Concern was expressed that the prohibition against ''knowingly and willfully'' covering up by any ''trick, scheme or device'' a material fact is unduly broad and meaningless. However, the language in § 11.18(b), ''knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact,'' is taken from 18 U.S.C. 1001. Section 1001, titled ''Statements or entries generally,'' provides: ''Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.'' The Office is only repeating an obligation with which practitioners otherwise have to comply. The section applies the statutory standard of conduct applicable to the submission of material facts in courts to proceedings in the Office. Case law has identified a number of circumstances involving knowingly falsifying material facts by trick, scheme, or device. See *e.g.*, *U.S.* v. *Zavala,* 139 F.2d 830 (2d Cir. 1944). Accordingly, the language has not been changed.

Section 11.18(b)(1) has been revised to clarify that the rule prohibits knowingly or willfully making false, fictitious, or fraudulent statements or representations or knowingly or willfully making or using a false writing or document known to contain any false, fictitious, or fraudulent statement or entry. The section has also been revised to point out that whoever violates the rule is subject to penalties of criminal statutes in addition to those under 18 U.S.C. 1001. Statements in this section to the effect that violations of the rule may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom have been removed as being beyond the scope of § 10.18(b)(1). Inasmuch as an offending paper may have little or no probative value, this section has been revised to state that violation of the rule may jeopardize the probative value of such a paper.

Section 11.18(c) sets forth sanctions that may be imposed for violations of § 11.18(b). Commentators urged that the Office has no authority to impose monetary sanctions for violations of § 11.18(b). As revised, the rule sets forth a non-exhaustive list of sanctions and actions the Office may impose or take. The revised proposed section removes reference to imposition of monetary sanctions. The sanctions have been revised to include striking the offending paper, precluding a practitioner from submitting a paper, and sanctions affecting the weight given to the offending paper. Actions the Office may take include referring a practitioner's conduct to the Office of Enrollment and Discipline for appropriate action.

These sanctions conform to those discussed in conjunction with the 1993 Amendment to Rule 11 of the Federal Rules of Civil Procedure. The commentary to the 1993 Amendment indicated that a court ''has available a variety of possible sanctions to impose for violations, such as striking the offending paper; * * * referring the matter to disciplinary authorities.'' Like Rule 11 of the Fed. R. Civ. P., the provisions in § 11.18 do not attempt to enumerate the factors that should be considered or the appropriate sanctions. The Office anticipates that in taking action under § 11.18 in applying sanctions, it would use the proper considerations utilized in issuing sanctions or taking action under Rule 11. Consideration may be given, for example, to whether the improper conduct was willful or negligent; whether it was part of a pattern of activity, or an isolated event; whether it infected an entire application, or only one particular paper; whether the person has engaged in similar conduct in other matters; whether the conduct was intended to injure; what effect the conduct had on the administrative process in time and expense; whether the responsible person is trained in law; what is needed to deter that person from repetition in the same case; and what is needed to deter similar conduct by others: all of these in a particular case may be proper considerations. See 28 U.S.C.A. Fed. R. Civ. P. 11, Adv. Comm. Notes, 1993 Amendments, Subdivisions (b) and (c).

Section 11.19: Section 11.19 sets forth the disciplinary jurisdiction of the Office. This section, as well as all other sections, have been revised to eliminate disciplinary provisions directed to ''other individuals.'' Accordingly, revised proposed § 11.19 no longer includes ''other individuals'' within the disciplinary jurisdiction of the Office.

Proposed § 11.19(b), which addressed the jurisdiction of courts and voluntary bar associations to discipline practitioners for misconduct, has been withdrawn in favor of the first paragraph of § 11.1, which is in the final rules adopted on July 26, 2004. It is believed that the first paragraph of § 11.1 sets forth in a manner superior to proposed rule § 11.19(b) that nothing in ''this Part * * * preempt[s] the authority of each State to regulate the practice of law, except to the extent necessary for the United States Patent and Trademark Office to accomplish its Federal objectives.''

''Misconduct'' was defined differently in proposed rules 11.19(c) and 11.804 in the December 12, 2003 proposed rule making. Proposed rule 11.19(c) identified misconduct constituting grounds for discipline whereas proposed rule 11.804 identified professional ''misconduct.'' Reference to ''misconduct'' has been removed from revised § 11.19. As revised, § 11.19(b) sets forth five grounds for discipline. Although § 11.804 is not included in this notice, it is anticipated that § 11.804 will be the only rule that describes professional ''misconduct.'' The grounds for discipline are clarified to provide consistency among the revised disciplinary procedural rules. The grounds for discipline are identified as conviction of a serious crime; discipline on ethical grounds imposed in another jurisdiction or disciplinary

disqualification from participating in or appearing before any Federal program or agency; failure to comply with any order of a Court disciplining a practitioner, or any final decision of the USPTO Director in a disciplinary matter; violation of the imperative USPTO Rules of Professional Conduct; and violation of the oath or declaration taken by the practitioner.

Section 11.20: Section 11.20 sets out the disciplinary sanctions the USPTO Director may impose on a practitioner after notice and opportunity for a hearing. Subsection 11.20(a)(2) has been revised to provide for suspension for an appropriate period of time. The revised proposed section removes provisions that comments suggested needed clarification, such as providing for suspension for an ''indefinite period'' and suspension for a period not in excess of five years. As revised, suspension may be imposed for a period that is appropriate under the facts and circumstances of the case. Subsection 11.20(a)(3) provides for reprimand, including both public and private reprimand. Subsection 11.20(b) provides that the USPTO Director may require a practitioner to make restitution either to persons financially injured by the practitioner's conduct or to an appropriate client's security trust fund, or both, as a condition of probation or of reinstatement. The restitution would be limited to the return of unearned practitioner fees or misappropriated client funds. The rule does not contemplate restitution for the value of an invention or patent.

Section 11.21: Section 11.21 provides that a warning is not a disciplinary sanction and that the OED Director may issue a warning at the conclusion of an investigation.

Inasmuch as a warning is not a disciplinary sanction, a warning would not be made public. A provision in the proposed rule requiring the OED Director to consult with and obtain the consent of a Committee on Discipline panel before issuing a warning has been removed as procedurally unnecessary and unduly burdensome. Another provision in the proposed rule, that the warning be final and unreviewable, also has been removed. To afford an avenue for review in disciplinary matters, paragraph (e) has been added to the revised § 11.3 to enable a practitioner to invoke the USPTO Director's supervisory authority.

Section 11.22: Section 11.22 sets forth provisions regarding the conduct of investigations. Consistent with suggestions from commentators, the rule has been revised to distinguish between complaints that initiate investigations and complaints that initiate disciplinary proceedings. Section 11.22 has been revised to refer to communications that initiate an investigation as grievances. The revised proposed sections, such as § 11.34, refer to communications initiating disciplinary proceedings as complaints. The revised proposed sections also omit as unnecessary provisions specifying procedures for screening and docketing matters.

As revised, § 11.22 provides that a practitioner will be notified in writing of the initiation of an investigation into whether the practitioner has engaged in conduct constituting grounds for discipline. In conducting an investigation, the OED Director may request information or evidence from the grievant, the practitioner, or any person who may reasonably be expected to provide information and evidence needed in connection with the grievance or investigation. See revised proposed § 11.22(f).

As discussed above, proposed § 11.16, regarding financial books and records, has been withdrawn. Nevertheless, the OED Director may still request such information pursuant to revised proposed § 11.22(f) in order to protect the public from practitioners who commingle client funds or improperly fail to refund unearned client funds. For example, evidence that one account of a practitioner has not been properly maintained or that funds of one client have not been properly handled should constitute cause for verifying the accuracy of the account that the practitioner maintains or should maintain containing the funds of the client for practice before the Office. Additionally, either a check drawn on a client trust account returned, for example, due to insufficient funds, or the failure to timely refund unearned funds to a client should similarly constitute cause to verify the contents of the same account. Where the OED Director receives information or evidence involving possible financial issues, the request to the practitioner would be limited to copies of books and records maintained by or for the practitioner for practice before the Office regarding the client. The foregoing examples are the same as those the American Bar Association recommends as grounds for inquiring into a lawyer's accounts. See Rule 30, Verification Of Bank Accounts, of the American Bar Association's Rules for Lawyer Disciplinary Enforcement. The books and records received by the OED Director from the practitioner would be treated as confidential and their use will be limited to the Office's investigation and disciplinary proceeding.

As noted above, the OED Director may request information or evidence. The OED Director's letters to practitioners request information; the letters are no longer called requirements for information. The Office's regulatory ability to require information is on appeal to the Federal Circuit. Among the ethics rules that remain under consideration are the provisions of ABA Model Rule 8.1. Model Rule 8.1 provides that, but for client confidences protected by another rule, a practitioner is prohibited from knowingly failing to respond to a lawful demand for information from a disciplinary authority. A practitioner's failure to comply with the OED Director's request for information conforming to Model Rule 8.1 would risk violating the rule. The Office intends by the change in nomenclature of the OED Director's letter not to change the sanctioning ability of the Office. However, the Office's regulatory ability to take sanctions in view of failure to comply with a request will be addressed in ethics rules that will follow as the Office will be informed by any judicial decision on the question. Additionally, the OED Director, when recommending that the Committee on Discipline approve the institution of formal charges, may reference the practitioner's refusal to provide information or records. The Committee may draw an adverse inference from the practitioner's refusal to provide information or records in determining whether probable cause exists to believe a disciplinary rule has been violated. When the Committee on Discipline finds probable cause, a disciplinary proceeding can be initiated. After the practitioner files an answer, the OED Director may seek the hearing officer's permission to obtain a subpoena for production of relevant information or records. Proposed § 11.52, pertaining to discovery, has been revised to address expressed concerns that the current rule inappropriately limits discovery. Revised proposed section 11.52(a) would permit discovery when a party establishes that discovery is reasonable and relevant. Information or records refused during an investigation may be reasonable and relevant in discovery. See Rules 11.38 and 11.58(a).

Section 11.22(f)(2) provides for requesting information and evidence regarding possible grounds for discipline of a practitioner from a non-grieving client. The request cannot be made unless the OED Director has obtained either the consent of the practitioner or a finding by a Contact Member of the Committee on Discipline

that good cause exists to believe that the possible ground for discipline alleged has occurred with respect to non-grieving clients. The Office agrees with the many comments that contacts with non-grieving clients about a practitioner without contacting the practitioner first should be rare. While many jurisdictions can contact non-grieving clients without established procedures, the Office considers that adoption of procedures to govern the exercise of such authority will best assure that this extraordinary step will be taken only when warranted. The Office therefore proposes to adapt a procedure followed in California, namely Rule 2410b, for the protection of practitioners and their clients. Accordingly, if a practitioner declines to consent, communication with the non-grieving client can occur if a Contact Member finds good cause to believe that a possible ground for discipline has occurred with respect to the non-grieving client. The Contact Member will closely scrutinize a showing made by the OED Director in deciding whether to grant or deny authorization to request the information or evidence.

Requesting information and documents from practitioners, as well as from non-grieving clients enables the OED Director, and ultimately the Office, to efficiently and effectively ascertain whether grounds for disciplining a practitioner exist. The clarification of § 11.22 is intended to result in a fair and consistent application of the rules to practitioners and enable the USPTO Director to protect the public.

Section 11.24: Section 11.24 provides a procedure for reciprocal discipline of a practitioner who has been disbarred or suspended by another jurisdiction (including any federal court and any state or federal administrative body or tribunal), or disciplinarily disqualified from participating in or appearing before any Federal program or agency. The Office would define the terms ''disqualified,'' ''Federal program,'' and ''Federal agency'' for the purposes of deciding whether a practitioner has been disqualified from participating in or appearing before any Federal program or agency. For that purpose, ''disqualified'' would mean any action that prohibits a practitioner from participating in or appearing before the program or agency, regardless of how long the prohibition lasts or the specific terminology used. The program or agency need not use the term ''disqualified'' to describe the action. For example, an agency may use analogous terms such as ''suspend,'' ''decertify,'' ''exclude,'' ''expel,'' or ''debar'' to describe the practitioner's disqualification from participating in the program or the agency. For the purposes of deciding whether a practitioner has been disqualified from participating in or appearing before any Federal program or agency, ''Federal program'' would mean any program established by an Act of Congress or administered by a Federal agency and ''Federal agency'' would mean any authority of the executive branch of the Government of the United States.

If an attorney has been disbarred or suspended in another jurisdiction, reciprocal discipline before the Office applies regardless whether the practitioner remains registered as an attorney or agent. If an attorney or registered patent agent is disciplinarily disqualified from participating in or appearing before any Federal program or agency, the practitioner is subject to reciprocal discipline before the Office. The revised proposed section applies reciprocal discipline to both attorneys and registered patent agents.

The reciprocal disciplinary proceeding would be initiated before the USPTO Director. The practitioner would be served with notice of the reciprocal proceeding, and provided an opportunity to reply. The practitioner would also be provided with a copy of the record or order of disbarment, suspension or disciplinary disqualification, and a complaint.

The USPTO Director would hear the reciprocal discipline matter on the documentary record unless the USPTO Director determines that an oral hearing is necessary. After careful review of the statute and case law, it has been concluded that oral hearings are not required for all licensing proceedings. 5 U.S.C. 558 does not itself require the application of 5 U.S.C. 556 to licensing proceedings, such as a disciplinary case. 5 U.S.C. 554 requires the application of § 556 ''in every case of adjudication required by statute to be determined on the record after opportunity for agency hearing,'' with exceptions not applicable here. See § 554(a). The provision of § 554 applies only where Congress has clearly indicated that a hearing required by statute must be a ''trial-type hearing on the record.'' *R.R. Comm'n of Texas* v. *United States,* 665 F. 2d 221, 227 (D.C. Cir. 1985), citing *United States* v. *Florida E. Coast Ry.,* 410 U.S. 224, 234 (1973). There are no decisions so interpreting 35 U.S.C. 32. That statute requires ''notice and opportunity for a hearing,'' and that ''the reasons for any [resulting] suspension or exclusion shall be duly recorded.'' A requirement to record the reasons for the decision is not the same as requiring a trial-type hearing. Accordingly, it is not believed that § 32 triggers §§ 554 and 556. Procedural due process is afforded by providing notice and opportunity to be heard on a documentary record, and recording the reasons for the decision. This is consistent with enrollment proceedings where these matters have long been conducted on the documentary record. Where the USPTO Director determines an oral hearing in a reciprocal disciplinary matter is necessary, the same would be provided.

No change is contemplated to continuing to have oral hearings in disciplinary proceedings before hearing officers conducted under § 11.44. Current § 10.144 and revised proposed § 11.44 provide for conducting disciplinary proceedings before the administrative law judge or hearing officer pursuant to § 556. They also provide for the hearings to be stenographically recorded and transcribed, and the testimony of witnesses to be received under oath or affirmation.

Section 11.24(c) has been revised to address stayed discipline. If a disciplinary sanction imposed by another jurisdiction or disciplinary disqualification imposed in the Federal program or agency has been stayed, any reciprocal discipline imposed by the USPTO may be deferred until the stay expires.

In reciprocal discipline proceedings, the practitioner would be provided with a forty-day period to inform the USPTO Director of: (1) Any argument that the practitioner was not disbarred, suspended or disciplinarily disqualified; and (2) any claim, predicated upon the grounds set forth in §§ 11.24(d)(1)(i) through (d)(1)(iii), that the imposition of the identical discipline would be unwarranted and the reasons for that claim. After expiration of the forty-day period, the USPTO Director would consider any timely filed response.

Pursuant to §§ 11.24(d)(1)(i) through (d)(1)(iii), the practitioner or OED Director could present one or more of the only following three arguments: (1) That the procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (2) that there was such infirmity of proof establishing the conduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject; or (3) that the imposition of the same discipline by the Office would result in grave injustice. Under § 11.24(d)(2), if the USPTO Director determines that any of the elements of §§ 11.24(d)(1)(i)

through (d)(1)(iii) exist, the USPTO Director would enter an appropriate order. For example, the USPTO Director might order a hearing before a hearing officer limited to the particular element.

Revised proposed § 11.24(f) provides for conditions when it would be permissible to impose reciprocal discipline *nunc pro tunc.* The practitioner must have promptly notified the OED Director of his or her discipline or disciplinary disqualification and must clearly and convincingly establish that the practitioner voluntarily ceased all activities related to practice before the Office and complied with all provisions of § 11.58. In such circumstances, the effective *nunc pro tunc* date would be the date the practitioner voluntarily ceased all activities related to practice before the Office and complied with all provisions of § 11.58.

Reinstatement following reciprocal discipline is addressed in § 11.24(g). A practitioner could petition for reinstatement under conditions set forth in § 11.60 no sooner than completion of the period of reciprocal discipline imposed, and compliance with all provisions of § 11.58.

Section 11.25: Section 11.25 would provide a revised procedure for interim suspension and discipline based upon conviction of committing a serious crime. Revised proposed § 11.25 parallels the procedure in Rule 19, Lawyers Found Guilty Of A Crime, of the Model Rules for Lawyer Disciplinary Enforcement of the American Bar Association. If a practitioner is convicted of a serious crime, the OED Director would initiate disciplinary action under this section without authorization of the Committee on Discipline. Serious crime was defined in proposed § 11.1 as meaning (1) any criminal offense classified as a felony under the laws of the United States, any state or any foreign country where the crime occurred, or (2) any crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the crime occurred, includes interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a ''serious crime.'' That definition, which is derived from the definitions of ''serious crime'' included in Rule 19(C) of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement and Rule I(B) of the American Bar Association Model Federal Rules of Disciplinary Enforcement, would apply in § 11.25.

Before initiating action, the OED Director would exercise reasonable care to confirm that the crime is a ''serious crime'' and that the convicted individual is a practitioner before the Office. For example, OED would consult with either or both prosecutor or state disciplinary counsel to confirm the classification of the crime, as well as obtain information confirming the identity of the convicted individual. OED could also compare information it receives regarding convicted individuals with its records and other records in the Office, in addition to asking the practitioner whether he or she is the person who was convicted. The OED Director would file with the USPTO Director proof of the finding of guilt, and a complaint against the practitioner complying with § 11.34 predicated upon the conviction. The OED Director would request issuance of a notice and order set forth in § 11.25(b)(1). If the crime is not a serious crime, the matter would be processed in the same manner as any other information or evidence of a possible violation of an imperative Rule of Professional Conduct coming to the attention of the OED Director.

Under revised proposed § 11.25(b), interim suspension could not be imposed until the practitioner has been afforded notice and opportunity to be heard. The USPTO Director would serve the practitioner with notice complying with § 11.35(a), (b) or (c) containing a copy of the court record; docket entry or judgment of conviction; a copy of the complaint; and an order directing the practitioner to inform the USPTO Director, within forty days of the date of the notice, of any predicate challenge establishing that interim suspension may not properly be ordered, such as that the crime did not constitute a ''serious crime'' or that the practitioner is not the individual who was convicted. See § 11.25(b)(2). The hearing for interim suspension would be heard on the documentary record and the practitioner's assertion of any predicate challenge. See § 11.25(b)(3). The practitioner would be placed on interim suspension immediately upon proof that the practitioner has been convicted of a serious crime regardless of the pendency of any appeal. See § 11.25(b)(3)(i). Interim suspension may be terminated in the interest of justice upon a showing of extraordinary circumstances. See § 11.25(b)(3)(ii).

Upon entering an order of interim suspension, the matter would be referred to the OED Director for institution of a formal disciplinary proceeding before a hearing officer. A disciplinary proceeding so instituted would not be brought to final hearing until all direct appeals from the conviction are concluded. Review of the initial decision of the hearing officer would be pursuant to § 11.55. See § 11.25(b)(4).

With respect to convictions in the United States, a certified copy of the court record, docket entry, or judgment of conviction in a court of the United States would be conclusive evidence that the practitioner committed the crime and was convicted. The sole issue in a formal disciplinary proceeding would be the nature and extent of the discipline to be imposed as a consequence of the conviction. See § 11.25(c)(1).

Inasmuch as not all other countries always meet minimum due process standards, a conviction in a foreign court even of a ''serious crime'' may not result in automatic disqualification. Therefore, a practitioner convicted in a foreign court of a serious crime may demonstrate in any hearing by clear and convincing evidence: that (1) the procedure in the foreign country was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process and rebut the *prima facie* evidence of guilt, or (2) there are material facts to be considered when determining if a serious crime was committed and whether a disciplinary sanction should be entered. See § 11.25(c)(ii).

Section 11.26: Section 11.26 has been revised to introduce provisions for settlement in disciplinary matters. The proposed rules did not provide for settlement. The revised proposed section codifies current practices.

Section 11.27: The provisions in § 11.27 set forth the procedure for excluding a practitioner on consent. Subsection 11.27(b) has been revised to provide that upon entering an order excluding a practitioner, the USPTO Director may include in the order provisions for other appropriate actions, such as restitution of unearned fees or misappropriated funds. See § 11.22(b).

Section 11.28: The provisions in § 11.28 regarding incapacitated practitioners have been revised to be limited to apply to disciplinary proceedings. As revised, the OED Director would not initiate efforts to have a practitioner declared incapacitated in disciplinary or non-disciplinary instances. Instead, a practitioner may move to have the proceeding held in abeyance because of a current disability or addiction. See § 11.28(a). If the practitioner's motion is granted, the practitioner will be transferred to disability inactive status

and precluded from practicing before the Office. See § 11.28(a)(2). Upon motion of the practitioner or the OED Director, the practitioner may be restored to active status, which will cause the disciplinary proceeding to resume. See §§ 11.28(b), (d) and (e). A practitioner engaging in practice before the Office or representing a party in litigation while on disability inactive status would be good cause for the OED Director to file a motion to resume a disciplinary proceeding that has been held in abeyance.

Section 11.36: Section 11.36, which provides for the practitioner's answer to a complaint, has been revised to provide that a practitioner must affirmatively state any intent to raise disability as a mitigating factor. We agree with comments that disability itself should not be a mitigating factor. Accordingly, the revised proposed section requires the respondent practitioner to specify the disability, its nexus to the misconduct, and the reason it provides mitigation. Disability, such as mental disability or chemical dependency, including alcoholism or drug abuse, would be a mitigating factor only if the respondent practitioner makes an adequate showing of nexus and mitigation. Such a showing would be expected to include (1) medical evidence that the practitioner is affected by a chemical dependency or mental disability; (2) evidence that the chemical dependency or mental disability caused the misconduct; (3) the practitioner's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; (4) the recovery arrested the misconduct; and (5) recurrence of the misconduct is unlikely. These are the same standards set forth Section 9.32(i) of the American Bar Association Standards for Imposing Lawyer Sanctions (1992).

Section 11.36(c) has been revised to require a disability defense to be raised at the answer stage. A practitioner who fails to raise the defense at the answer stage cannot rely on the disability absent a showing of good cause to the hearing officer for leave to amend the answer. Revised § 11.36(c) employs language similar to the requirement in the Federal Rules of Criminal Procedure for fixing a deadline for raising an insanity defense. Rule 12.2 of the Fed. R. Crim. P. states ''A defendant who intends to assert a defense of insanity at the time of the alleged offense must so notify an attorney for the government in writing within the time provided for filing a pretrial motion, or at any later time the court sets, and file a copy of the notice with the clerk. A defendant who fails to do so cannot rely on an insanity defense. The court may, for good cause, allow the defendant to file the notice late, grant additional trial-preparation time, or make other appropriate orders.''

Section 11.39: Section 11.39(g) has been added to provide that the hearing officer not engage in *ex parte* discussions with any party regarding the merits of the complaint, beginning with appointment and concluding with the final agency decision. The addition clarifies the period during which the hearing officer is not permitted to discuss the merits of a complaint. The period is of limited duration to enable counsel representing the agency to consult, if necessary, with the hearing officer if court review is sought of the final agency decision.

Section 11.40: In view of changes in the Office's organization and the authorities of the Deputy General Counsel for Intellectual Property and Solicitor, proposed § 11.40(b) has been revised to provide that the Solicitor and attorneys in the Office of the Solicitor shall represent the OED Director in disciplinary proceedings.

Section 11.40(b) also has been revised to provide that the USPTO Director may consult with the OED Director and attorneys representing the OED Director after a final agency decision has been entered concerning any further proceedings. The need for consultation arises in the event that the practitioner seeks review of the decision in the United States District Court for the District of Columbia pursuant to 35 U.S.C. 32. There is no necessity after a final agency decision issues to continue to maintain a wall between the USPTO Director or officials representing the USPTO Director, the OED Director, or those representing the OED Director. The revision codifies current practice and provides that after a final decision is entered in a disciplinary proceeding, the OED Director and attorneys representing the OED Director shall be available to counsel the USPTO Director, the General Counsel, and the Deputy General Counsel for General Law in any further proceedings.

Section 11.44: Oral hearings before a hearing officer would be conducted as if the proceeding were subject to 5 U.S.C. 556. A hearing officer would thus continue to preside over the disciplinary proceeding. An oral hearing would be unnecessary where, for example, there is a settlement, or the hearing officer entered an order default judgment or summary judgment. If there is an oral hearing, it would also continue to be stenographically recorded and transcribed, and the testimony of witnesses would continue to be received under oath or affirmation. A copy of the transcript of the hearing would continue to become part of the record. The OED Director and respondent would make their own arrangements with the stenographer to obtain a copy of the hearing transcript. An excluded or suspended practitioner would reimburse the Office for OED's expense of the hearing transcript cost, and any fee paid for the services of the reporter. See proposed § 11.60(d)(2)(i). The expense of deposition transcripts would be borne by the party requesting depositions inasmuch as the rules are silent regarding such costs.

Section 11.45: This section has been revised to provide for amending the complaint without authorization from the Committee on Discipline. The purpose of the amendments would be to include additional charges based upon conduct committed before or after the complaint was filed. The hearing officer would have to approve amendment of the complaint and authorize amendment of the answer. The revised practice conforms to disciplinary procedural rules adopted in several states. For example, Missouri Disciplinary Rule 5.15(b) provides that ''[i]f any amendment substantially changes the charges, the respondent shall be given a reasonable time to respond.'' Florida's Rule 3–7.6(h) is a disciplinary rule governing pleadings, including complaints, in Procedures Before a Referee. Rule 3–7.6(h)(6) provides ''[p]leadings may be amended by order of the referee, and a reasonable time shall be given within which to respond thereto.'' In the First Department of New York, disciplinary procedure § 605.11 provides ''[w]henever, in the course of any hearing under these Rules, evidence shall be presented upon which another charge or charges against the Respondent might be made, it shall not be necessary to prepare or serve an additional Notice of Charges with respect thereto, but the Referee may, after reasonable notice to the Respondent and an opportunity to answer and be heard, proceed to the consideration of such additional charge or charges as if they had been made and served at the time of service of the Notice of Charges, and may render its decision upon all such charges as may be justified by the evidence in the case.'' As revised, procedural efficiencies are realized by reducing the time and resources needed to amend the complaint, while expediting resolution of all disciplinary issues that the OED

Director becomes aware of during the proceeding.

Section 11.49: This section would maintain the ''clear and convincing'' burden of proof. Comments overwhelmingly expressed a preference for maintaining the current burden of proof, as opposed to reducing the burden to a preponderance of evidence.

Section 11.52: Section 11.52(b)(1) has been revised pursuant to several suggestions to permit reasonable and relevant discovery. It also permits reasonable and relevant discovery of records and information a practitioner did not disclose or release during an investigation. The provision in the proposed rules for discovery of the identity of Government employees who have investigated the case has been eliminated as unnecessary inasmuch as the investigator(s) is or are named in and sign the inquiry letters mailed to the practitioner.

Section 11.55: Section 11.55 has been reorganized and revised to clarify the process of appealing a decision to the USPTO Director. As revised, the rule would clarify who is the appellant and require all briefs, including reply briefs, to comply with specified standards.

Section 11.56: Section 11.56(b) has been revised to provide that the final decision of the USPTO Director, in addition to disciplining a practitioner or dismissing a disciplinary proceeding, may also reverse or modify the initial decision. The revision conforms to current practice and inherent authority. Section 11.56(b) is further revised to provide that a final decision suspending or excluding a practitioner will require compliance with § 11.58. The final order also may condition reinstatement upon a showing that the practitioner has taken steps to correct or mitigate the matter forming the basis of the action or to prevent a recurrence of the same or similar conduct. Section 11.56(c) has been revised to add a ground on which a request for reconsideration or modification could be granted. Specifically, the request could be granted based on an error of law, a basis that is not provided for by the current rule.

Section 11.57: Section 11.57(a), which pertains to review of final decisions of the USPTO Director at the United States District Court for the District of Columbia, has been revised to draw the practitioner's attention to the necessity for complying with service requirements of Rule 4 of the Federal Rules of Civil Procedure and 37 CFR 104.2. Section 11.57(b), as revised, provides that except as provided for in § 11.56(c), an order for discipline in a final decision will not be stayed except on proof of exceptional circumstances. Excluded or suspended practitioners would be unable to represent clients before the Office or earn income from representing clients before the Office. Accordingly, such circumstances are considered to be the normal result of exclusion or suspension, and would not render a case exceptional to merit a stay of discipline pending appeal. Proof of an exceptional circumstance necessarily requires a showing that there is reason to believe the practitioner would likely succeed on appeal.

Section 11.58: Section 11.58(e) will continue to permit suspended, excluded, or resigned practitioners to act as paralegals for other registered practitioners. The public is adequately protected by requiring the practitioner to notify all clients he or she represents with immediate or prospective business before the Office of the disciplinary action and resulting suspension, exclusion, or resignation. See § 11.58(b)(1)(iii). The clients include, for example, clients for whom the practitioner has prepared and filed papers at the Office, clients for whom the practitioner has been engaged to prepare documents to be filed in the Office but has yet to file any documents, and clients whom the practitioner has billed for work performed or to be performed. The public and other affected persons are adequately protected by precluding the suspended, excluded, or resigned practitioner from communicating directly with the employing practitioner's clients, meeting with those clients, or rendering any legal advice or services to them. Proposed § 11.58(b)(1)(v) has been revised to provide that the disciplined or resigned practitioner must relinquish to the client or other practitioner designated by the client, all funds for practice before the Office, including any legal fees paid in advance that have not been earned and any advanced costs not expended. The revision provides operational efficiencies that enable the client, or the client's new counsel in consultation with the client, to determine to whom funds should be transferred to enable the client to pursue his or her legal rights.

Proposed rule 11.58(b), regarding reactivation of practitioners on disability inactive status, has been eliminated as unnecessary. The revised proposed sections have limited disability inactive status to practitioners who are in a disciplinary proceeding and provide procedures for their reactivation in revised proposed § 11.28(b). Disability inactive status would be unavailable to practitioners who are not in a disciplinary proceeding. Accordingly, it is unnecessary to address reactivation of practitioners in disability inactive status in § 11.58.

Section 11.59: Section 11.59 has been revised to improve information dissemination to protect the public from disciplined practitioners. Section 11.59(a) provides for informing the public of the disposition of each matter in which public discipline has been imposed and of any other changes in a practitioner's registration status. Public discipline is identified as exclusion, including exclusion on consent, suspension, and public reprimand. In the usual circumstances, the OED Director would give notice of public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state where the practitioner is admitted practice, to courts where the practitioner is known to be admitted, and the public. The final decision of the USPTO Director would be published if public discipline is imposed. A redacted version of the final decision would be published if a private reprimand is imposed. Changes in status, such as suspended, excluded, or disability inactive status, would also be published.

Section 11.59(b) has been revised to provide that, but for records that the USPTO Director orders to be kept confidential, records of every disciplinary proceeding where a practitioner is reprimanded, suspended, or excluded will be available to the public upon written request. An exception is provided to enable the Office to withhold information as necessary to protect the privacy and commercial interests of third parties. The record of a proceeding that results in a practitioner's transfer to disability inactive status would not be available to the public.

Section 11.60: Section 11.60 has been revised to refer to practitioners who have been excluded on consent as resigned practitioners and to provide for their reinstatement.

Section 11.61: Sections 11.61(c) and (d) have been added to the savings clause to clarify when the specific rule changes would be effective. The provisions of §§ 11.24, 11.25, 11.28 and 11.34 through 11.57 would apply to all proceedings in which the complaint is filed on or after the effective date of these regulations. Sections 11.26 and 11.27 would apply to matters pending on or after the effective date of these regulations. Sections 11.58 through 11.60 would apply to all cases in which an order of suspension or exclusion is entered or resignation is accepted on or

after the effective date of these regulations.

Classification

Regulatory Flexibility Act: The Deputy General Counsel for General Law, United States Patent and Trademark Office, certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes in this notice of proposed rule making will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The provisions of the Regulatory Flexibility Act relating to the preparation of an initial flexibility analysis are not applicable to this rule making because the rules will not have a significant economic impact on a substantial number of small entities. The primary purpose of the rule changes is to bring the USPTO's disciplinary procedural rules for practitioners in line with the American Bar Association Model Rules, American Bar Association Model Rules for Lawyer Disciplinary Enforcement, American Bar Association Model Federal Rules of Disciplinary Enforcement and rules adopted by other federal agencies. This will ease the practitioners' burden in learning and complying with USPTO regulations.

The rule eliminates a fee of $130 for petitions in disciplinary cases to enable petitioners to invoke the supervisory authority of the USPTO Director. The rule does not affect the fee of $130 previously adopted for petition to the Director of Enrollment and Discipline in enrollment and registration matters.

The rule imposes a $1600 fee for a petition for reinstatement for a suspended or excluded practitioner and removes the $1500 cap on disciplinary proceeding costs that can be assessed against such a practitioner as a condition of reinstatement. Approximately five of the 30,000 practitioners petition for reinstatement each year, and approximately two of these petitions occur under circumstances where disciplinary proceeding costs may be assessed. These changes, therefore, will not affect a substantial number of practitioners.

Executive Order 13132: This notice of proposed rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866: This notice of proposed rule making has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act: This supplemental notice of proposed rule making involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This supplemental notice of proposed rule making contains revisions that the United States Patent and Trademark Office (USPTO) is proposing to the rules governing the conduct of professional responsibility investigations and disciplinary proceedings. The principal impact of the changes in this supplemental notice of proposed rule making is on registered practitioners. The information collections involved in this proposed rule have been previously reviewed and approved by OMB under OMB control numbers 0651–0012 and 0651–0017. The proposed revisions do not affect the information collection requirements for 0651–0012 and 0651–0017, so the USPTO is not resubmitting these collections to OMB for review and approval.

The title, description, and respondent description of the currently approved information collections for 0651–0012 and 0651–0017 are shown below with estimates of the annual reporting burdens. Included in the estimates is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0012

Title: Admittance to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the Patent and Trademark Office (USPTO).

Form Numbers: PTO–158, PTO–158A, PTO/275, PTO–107A, and PTO–1209.

Type of Review: Approved through March of 2007.

Affected Public: Individuals or households, businesses or other for-profit, Federal Government, and state, local, or tribal governments.

Estimated Number of Respondents: 20,231.

Estimated Time per Response: 10 minutes to 40 hours.

Estimated Total Annual Burden Hours: 46,567 hours.

Needs and Uses: The public uses the forms in this collection to ensure that all of the necessary information is provided to the USPTO and to request inclusion on the Register of Patent Attorneys and Agents.

OMB Number: 0651–0017

Title: Practitioner Records Maintenance, Disclosure, and Discipline Before the United States Patent and Trademark Office (USPTO).

Form Numbers: None.

Type of Review: Approved through July of 2007.

Affected Public: Individuals or households, businesses or other for-profit, Federal Government, and state, local, or tribal governments.

Estimated Number of Respondents: 582.

Estimated Time per Response: 5 minutes to 60 hours.

Estimated Total Annual Burden Hours: 8,334 hours.

Needs and Uses: The information in this collection is necessary for the United States Patent and Trademark Office to comply with Federal regulations, 35 U.S.C. 6(a) and 35 U.S.C. 31. The Office of Enrollment and Discipline collects this information to ensure compliance with the USPTO Code of Professional Responsibility, 37 CFR 10.20–10.112. This Code requires that registered practitioners maintain complete records of clients, including all funds, securities, and other properties of clients coming into his/her possession, and render appropriate accounts to the client regarding such records, as well as report violations of the Code to the USPTO. The registered practitioners are mandated by the Code to maintain proper documentation so that they can fully cooperate with an investigation in the event of a report of an alleged violation and so that violations are prosecuted as appropriate.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Harry I. Moatz, Director of Enrollment and Discipline, Mail Stop OED-Ethics Rules, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork

Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 11 Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the United States Patent and Trademark Office proposes to amend 37 CFR Part 11 as follows:

PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

1. The authority citation for 37 CFR Part 11 would continue to read as follows:

Authority: 5 U.S.C. 500, 15 U.S.C. 1123, 35 U.S.C. 2(b)(2), 32.

2. Section 11.1 is amended to add the definition of *State* as follows:

§ 11.1 Definitions

* * * * *

State means any of the 50 states of the United States of America, the District of Columbia, and any Commonwealth or territory of the United States of America.

* * * * *

3. Section 11.2 is amended to revise paragraphs (a), (b)(4), (c) and (d) and add paragraphs (b)(5), (b)(6) and (e) to read as follows:

§ 11.2 Director of the Office of Enrollment and Discipline.

(a) *Appointment.* The USPTO Director shall appoint a Director of the Office of Enrollment and Discipline (OED Director). In the event of a vacancy in the office of the OED Director, the USPTO Director may designate an employee of the Office to serve as acting OED Director. The OED Director shall be an active member in good standing of the bar of a State.

(b) * * *

(4) Conduct investigations of matters involving possible grounds for discipline of practitioners coming to the attention of the OED Director. Except in matters meriting summary dismissal, no disposition shall be recommended or undertaken by the OED Director until the accused practitioner shall have been afforded an opportunity to respond to a reasonable inquiry by the OED Director.

(5) With the consent of a panel of three members of the Committee on Discipline, initiate disciplinary proceedings under § 11.32 and perform such other duties in connection with investigations and disciplinary proceedings as may be necessary.

(6) Oversee the preliminary screening of information and close investigations as provided for in § 11.22.

(c) *Petition to OED Director regarding enrollment or recognition.* Any petition from any action or requirement of the staff of OED reporting to the OED Director shall be taken to the OED Director accompanied by payment of the fee set forth in § 1.21(a)(5)(i). Any such petition not filed within sixty days from the mailing date of the action or notice from which relief is requested will be dismissed as untimely. The filing of a petition will neither stay the period for taking other action which may be running, nor stay other proceedings. A final decision by the OED Director may be reviewed in accordance with the provisions of paragraph (d) of this section.

(d) *Review of OED Director's decision regarding enrollment or recognition.* A party dissatisfied with a final decision of the OED Director regarding enrollment or recognition may seek review of the decision upon petition to the USPTO Director accompanied by payment of the fee set forth in § 1.21(a)(5)(ii). Any such petition to the USPTO Director waives a right to seek reconsideration from the OED Director. Any petition not filed within thirty days after the final decision of the OED Director may be dismissed as untimely. Briefs or memoranda, if any, in support of the petition shall accompany the petition. The petition will be decided on the basis of the record made before the OED Director. The USPTO Director in deciding the petition will consider no new evidence. Copies of documents already of record before the OED Director shall not be submitted with the petition. An oral hearing will not be granted except when considered necessary by the USPTO Director. Any request for reconsideration of the decision of the USPTO Director may be dismissed as untimely if not filed within thirty days after the date of said decision.

(e) *Petition to USPTO Director in disciplinary matters.* Petition may be taken to the USPTO Director to invoke the supervisory authority of the USPTO Director in appropriate circumstances in disciplinary matters. Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support of the petition must accompany the petition. Where facts are to be proven, the proof in the form of affidavits or declarations (and exhibits, if any) must accompany the petition. The OED Director may be directed by the USPTO Director to file a reply to the petition, supplying a copy to the petitioner. An oral hearing will not be granted except when considered necessary by the USPTO Director. The mere filing of a petition will not stay an investigation, disciplinary proceeding or other proceedings. Any petition under this part not filed within thirty days of the mailing date of the action or notice from which relief is requested may be dismissed as untimely. Any request for reconsideration of the decision of the USPTO Director may be dismissed as untimely if not filed within thirty days after the date of said decision.

4. Section 11.3 is revised to read as follows:

§ 11.3 Suspension of rules.

(a) Except as provided in paragraph (b) of this section, in an extraordinary situation, when justice requires, any requirement of the regulations of this Part which is not a requirement of statute may be suspended or waived by the USPTO Director or the designee of the USPTO Director, *sua sponte,* or on petition by any party, including the OED Director or the OED Director's representative, subject to such other requirements as may be imposed.

(b) No petition under this section shall stay a disciplinary proceeding unless ordered by the USPTO Director or a hearing officer.

Subpart B—Recognition to Practice Before the USPTO

5. Section 11.5 is revised to read as follows:

§ 11.5 Register of attorneys and agents in patent matters; practice before the Office.

(a) A register of attorneys and agents is kept in the Office on which are entered the names of all individuals recognized as entitled to represent applicants having prospective or immediate business before the Office in the preparation and prosecution of patent applications. Registration in the Office under the provisions of this part shall entitle the individuals so registered to practice before the Office only in patent matters.

(b) *Practice before the Office.* Practice before the Office includes, but is not limited to, law-related service that comprehends any matter connected with the presentation to the Office or any of its officers or employees relating to a client's rights, privileges, duties, or responsibilities under the laws or regulations administered by the Office for the grant of a patent or registration of a trademark, or for enrollment or disciplinary matters. Such presentations

include preparing necessary documents in contemplation of filing the documents with the Office, corresponding and communicating with the Office, and representing a client through documents or at interviews, hearings, and meetings, as well as communicating with and advising a client concerning matters pending or contemplated to be presented before the Office. Nothing in this section proscribes a practitioner from employing non-practitioner assistants under the supervision of the practitioner to assist the practitioner in preparation of said presentations.

(1) *Practice before the Office in patent matters.* Practice before the Office in patent matters includes, but is not limited to, preparing and prosecuting any patent application, consulting with or giving advice to a client in contemplation of filing a patent application or other document with the Office, considering the advisability of relying upon alternative forms of protection that may be available under State law, drafting the specification or claims of a patent application; drafting an amendment or reply to a communication from the Office that may require written argument to establish the patentability of a claimed invention; drafting a reply to a communication from the Office regarding a patent application, and drafting a communication for a public use, interference, reexamination proceeding, petition, appeal to the Board of Patent Appeals and Interferences, or other proceeding.

(2) *Practice before the Office in trademark matters.* Practice before the Office in trademark matters includes, but is not limited to, consulting with or giving advice to a client in contemplation of filing a trademark registration application or other document with the Office; preparing and prosecuting an application for trademark registration; preparing an amendment which may require written argument to establish the registrability of the mark; and conducting an opposition, cancellation, or concurrent use proceeding; or conducting an appeal to the Trademark Trial and Appeal Board.

6. Sections 11.14 through 11.18 are added to read as follows:

§ 11.14 Individuals who may practice before the Office in trademark and other non-patent matters.

(a) *Attorneys.* Any individual who is an attorney may represent others before the Office in trademark and other non-patent matters. An attorney is not required to apply for registration or recognition to practice before the Office in trademark and other non-patent matters. Registration as a patent attorney does not itself entitle an individual to practice before the Office in trademark matters.

(b) *Non-lawyers.* Individuals who are not attorneys are not recognized to practice before the Office in trademark and other non-patent matters, except that individuals not attorneys who were recognized to practice before the Office in trademark matters under this chapter prior to January 1, 1957, will be recognized as agents to continue practice before the Office in trademark matters. Except as provided in the preceding sentence, registration as a patent agent does not itself entitle an individual to practice before the Office in trademark matters.

(c) *Foreigners.* Any foreign attorney or agent not a resident of the United States who shall file a written application for reciprocal recognition under paragraph (f) of this section and prove to the satisfaction of the OED Director that he or she is registered or in good standing before the patent or trademark office of the country in which he or she resides and practices and is possessed of good moral character and reputation, may be recognized for the limited purpose of representing parties located in such country before the Office in the presentation and prosecution of trademark matters, provided: the patent or trademark office of such country allows substantially reciprocal privileges to those permitted to practice in trademark matters before the Office. Recognition under this paragraph shall continue only during the period that the conditions specified in this paragraph obtain.

(d) Recognition of any individual under this section shall not be construed as sanctioning or authorizing the performance of any act regarded in the jurisdiction where performed as the unauthorized practice of law.

(e) No individual other than those specified in paragraphs (a), (b), and (c) of this section will be permitted to practice before the Office in trademark matters on behalf of a client. Any individual may appear in a trademark or other non-patent matter in his or her own behalf. Any individual may appear in a trademark matter for:

(1) A firm of which he or she is a member,

(2) A partnership of which he or she is a partner, or

(3) A corporation or association of which he or she is an officer and which he or she is authorized to represent, if such firm, partnership, corporation, or association is a party to a trademark proceeding pending before the Office.

(f) *Application for reciprocal recognition.* An individual seeking reciprocal recognition under paragraph (c) of this section, in addition to providing evidence satisfying the provisions of paragraph (c) of this section, shall apply in writing to the OED Director for reciprocal recognition, and shall pay the application fee required by § 1.21(a)(1)(i) of this subchapter.

§ 11.15 Refusal to recognize a practitioner.

Any practitioner authorized to appear before the Office may be suspended, excluded, or reprimanded in accordance with the provisions of this Part. Any practitioner who is suspended or excluded under this Part shall not be entitled to practice before the Office in patent, trademark, or other non-patent matters while suspended or excluded.

§ 11.16–11.17 [Reserved]

§ 11.18 Signature and certificate for correspondence filed in the Office.

(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, and all documents filed with a hearing officer in a disciplinary proceeding, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Office must bear a signature, personally signed by such practitioner, in compliance with § 1.4(d)(1) of this subchapter.

(b) By presenting to the Office or hearing officer in a disciplinary proceeding (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or knowingly and willfully makes any false, fictitious, or fraudulent statements or representations, or knowingly and willfully makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001 and any other applicable criminal statute, and violations of the provisions of this section may

jeopardize the probative value of the paper; and

(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,

(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of any proceeding before the Office;

(ii) The other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions or actions as deemed appropriate by the USPTO Director, which may include, but are not limited to, any combination of—

(1) Striking the offending paper;

(2) Referring a practitioner's conduct to the Director of Enrollment and Discipline for appropriate action;

(3) Precluding a party or practitioner from submitting a paper, or presenting or contesting an issue;

(4) Affecting the weight given to the offending paper;

(5) Requiring a terminal disclaimer or reducing the term of a patent for a period equal to the period the offending paper is advocated; or

(6) Terminating the proceedings in the Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action.

7. Part 11 is amended to add Subpart C to read as follows:

Subpart C—Investigations And Disciplinary Proceedings

Jurisdiction, Sanctions, Investigations, and Proceedings

Sec.

11.19 Disciplinary jurisdiction.
11.20 Disciplinary sanctions.
11.21 Warnings.
11.22 Investigations.
11.23 Committee on Discipline.
11.24 Reciprocal discipline.
11.25 Interim suspension and discipline based upon conviction of committing a serious crime.
11.26 Settlement.
11.27 Exclusion on consent.
11.28 Incapacitated practitioners in a disciplinary proceeding.
11.29–11.31 [Reserved]
11.32 Initiating a disciplinary proceeding.
11.33 [Reserved]
11.34 Complaint.
11.35 Service of complaint.
11.36 Answer to complaint.
11.37 [Reserved]
11.38 Contested case.
11.39 Hearing officer; appointment; responsibilities; review of interlocutory orders; stays.
11.40 Representative for OED Director or respondent.
11.41 Filing of papers.
11.42 Service of papers.
11.43 Motions.
11.44 Hearings.
11.45 Amendment of pleadings.
11.46–11.48 [Reserved]
11.49 Burden of proof.
11.50 Evidence.
11.51 Depositions.
11.52 Discovery.
11.53 Proposed findings and conclusions; post-hearing memorandum.
11.54 Initial decision of hearing officer.
11.55 Appeal to the USPTO Director.
11.56 Decision of the USPTO Director.
11.57 Review of final decision of the USPTO Director.
11.58 Duties of disciplined or resigned practitioner.
11.59 Dissemination of disciplinary and other information.
11.60 Petition for reinstatement.
11.61 Savings clause.
11.62–11.99 [Reserved]

§ 11.19 Disciplinary jurisdiction.

(a) All practitioners engaged in practice before the Office; all practitioners administratively suspended under § 11.11(b); all practitioners registered to practice before the Office in patent cases; all practitioners inactivated under § 11.11(c); all practitioners authorized under § 11.6(d) to take testimony; and all practitioners reprimanded, suspended, or excluded from the practice of law by a duly constituted authority, including by the USPTO Director, are subject to the disciplinary jurisdiction of the Office. Practitioners who have resigned under § 11.11(e) shall also be subject to such jurisdiction with respect to conduct undertaken prior to the resignation and conduct in regard to any practice before the Office following the resignation.

(b) *Grounds for discipline.* The following, whether done individually by a practitioner or in concert with any other person or persons and whether or not done in the course of providing legal services to a client, or in a matter pending before the Office, constitute grounds for discipline. Grounds for discipline include:

(1) Conviction of a serious crime;

(2) Discipline on ethical grounds imposed in another jurisdiction or disciplinary disqualification from participating in or appearing before any Federal program or agency;

(3) Failure to comply with any order of a Court disciplining a practitioner, or any final decision of the USPTO Director in a disciplinary matter;

(4) Violation of the imperative USPTO Rules of Professional Conduct; or

(5) Violation of the oath or declaration taken by the practitioner. See § 11.8.

(c) Petitions to disqualify a practitioner in *ex parte* or *inter partes* matters in the Office are not governed by §§ 11.19 through 11.806 and will be handled on a case-by-case basis under such conditions as the USPTO Director deems appropriate.

(d) The OED Director may refer the existence of circumstances suggesting unauthorized practice of law to the authorities in the appropriate jurisdiction(s).

§ 11.20 Disciplinary sanctions.

(a) *Types of discipline.* The USPTO Director, after notice and opportunity for a hearing, and where grounds for discipline exist, may impose on a practitioner the following types of discipline:

(1) Exclusion from practice before the Office;

(2) Suspension from practice before the Office for an appropriate period of time;

(3) Reprimand; or

(4) *Probation.* Probation may be imposed *in lieu* of or in addition to any other disciplinary sanction. Any conditions of probation shall be stated in writing in the order imposing probation. The order shall also state whether, and to what extent, the practitioner shall be required to notify clients of the probation. The order shall establish procedures for the supervision of probation. Violation of any condition of probation shall be cause for the probation to be revoked, and the disciplinary sanction to be imposed for the remainder of the probation period. Revocation of probation shall occur only after an order to show cause why probation should not be revoked is resolved adversely to the practitioner.

(b) *Conditions imposed with discipline.* When the USPTO Director imposes discipline, the practitioner may be required to make restitution either to persons financially injured by the practitioner's conduct or to an appropriate client's security trust fund, or both, as a condition of probation or of reinstatement. Such restitution shall be limited to the return of unearned

practitioner fees or misappropriated client funds. Any other reasonable condition may also be imposed, including a requirement that the practitioner take and pass a professional responsibility examination.

§ 11.21 Warnings.

A warning is not a disciplinary sanction. The OED Director may conclude an investigation with the issuance of a warning. The warning shall contain a brief statement of facts and imperative USPTO Rules of Professional Conduct relevant to the facts.

§ 11.22 Investigations.

(a) The OED Director is authorized to investigate possible grounds for discipline. An investigation may be initiated when the OED Director receives a grievance, information or evidence from any source suggesting possible grounds for discipline. Neither unwillingness nor neglect by a grievant to prosecute a charge, nor settlement, compromise, or restitution with the grievant, shall in itself justify abatement of an investigation.

(b) Any person possessing information or evidence concerning possible grounds for discipline of a practitioner may report the information or evidence to the OED Director. The OED Director may request that the report be presented in the form of an affidavit or declaration.

(c) Information or evidence coming from any source which presents or alleges facts suggesting possible grounds for discipline of a practitioner will be deemed a grievance.

(d) *Preliminary screening of information or evidence.* The OED Director shall examine all information or evidence concerning possible grounds for discipline of a practitioner.

(e) *Notification of investigation.* The OED Director shall notify the practitioner in writing of the initiation of an investigation into whether a practitioner has engaged in conduct constituting possible grounds for discipline.

(f) *Request for information and evidence by OED Director.* (1) In the course of the investigation, the OED Director may request information and evidence regarding possible grounds for discipline of a practitioner from:

(i) The grievant,

(ii) The practitioner, or

(iii) Any person who may reasonably be expected to provide information and evidence needed in connection with the grievance or investigation.

(2) The OED Director may request information and evidence regarding possible grounds for discipline of a practitioner from a non-grieving client either after obtaining the consent of the practitioner or upon a finding by a Contact Member of the Committee on Discipline, appointed in accordance with § 11.23(d), that good cause exists to believe that the possible ground for discipline alleged has occurred with respect to non-grieving clients. Neither a request for, nor disclosure of, such information shall constitute a violation of any of the Rules of Professional Conduct contained in §§ 11.100 et seq.

(g) *Disposition of investigation.* Upon the conclusion of an investigation, the OED Director may:

(1) Close the investigation without issuing a warning, or taking disciplinary action;

(2) Issue a warning to the practitioner;

(3) Institute formal charges upon the approval of the Committee on Discipline; or

(4) Enter into a settlement agreement with the practitioner and submit the same for approval of the USPTO Director.

(h) *Closing investigation without issuing a warning or taking disciplinary action.* The OED Director shall terminate an investigation and decline to refer a matter to the Committee on Discipline if the OED Director determines that:

(1) The information or evidence is unfounded;

(2) The information or evidence relates to matters not within the jurisdiction of the Office;

(3) As a matter of law, the conduct about which information or evidence has been obtained does not constitute grounds for discipline, even if the conduct may involve a legal dispute; or

(4) The available evidence is insufficient to conclude that there is probable cause to believe that grounds exist for discipline.

§ 11.23 Committee on Discipline.

(a) The USPTO Director shall appoint a Committee on Discipline. The Committee on Discipline shall consist of at least three employees of the Office. None of the Committee members shall report directly or indirectly to the OED Director or any employee designated by the USPTO Director to decide disciplinary matters. Each Committee member shall be a member in good standing of the bar of the highest court of a State. The Committee members shall select a Chairperson from among themselves. Three Committee members will constitute a panel of the Committee.

(b) *Powers and duties of the Committee on Discipline.* The Committee shall have the power and duty to:

(1) Meet in panels at the request of the OED Director and, after reviewing evidence presented by the OED Director, by majority vote of the panel, determine whether there is probable cause to bring charges under § 11.32 against a practitioner; and

(2) Prepare and forward its own probable cause findings and recommendations to the OED Director.

(c) No discovery shall be authorized of, and no member of the Committee on Discipline shall be required to testify about deliberations of, the Committee on Discipline or of any panel.

(d) The Chairperson shall appoint the members of the panels and a Contact Member of the Committee on Discipline.

§ 11.24 Reciprocal discipline.

(a) *Notification of OED Director.* Within thirty days of being disbarred or suspended by another jurisdiction, or being disciplinarily disqualified from participating in or appearing before any Federal program or agency, a practitioner subject to the disciplinary jurisdiction of the Office shall notify the OED Director in writing of the same. A practitioner is deemed to be disbarred if he or she is disbarred, excluded on consent, or has resigned in lieu of a disciplinary proceeding. Upon receiving notification from any source or otherwise learning that a practitioner subject to the disciplinary jurisdiction of the Office has been so disciplined or disciplinarily disqualified, the OED Director shall obtain a certified copy of the record or order regarding the disbarment, suspension, or disciplinary disqualification and file the same with the USPTO Director. The OED Director shall, in addition, without Committee on Discipline authorization, file with the USPTO Director a complaint complying with § 11.34 against the practitioner predicated upon the disbarment, suspension, or disciplinary disqualification. The OED Director shall request the USPTO Director to issue a notice and order as set forth in paragraph (b) of this section.

(b) *Notification served on practitioner.* Upon receipt of a certified copy of the record or order regarding the practitioner being so disciplined or disciplinarily disqualified together with the complaint, the USPTO Director shall forthwith issue a notice directed to the practitioner in accordance with § 11.35 and to the OED Director containing:

(1) A copy of the record or order regarding the disbarment, suspension, or disciplinary disqualification;

(2) A copy of the complaint; and

(3) An order directing the practitioner to inform the USPTO Director, within forty days of the date of the notice, of:

(i) Any argument that the practitioner was not disbarred, suspended, or disciplinarily disqualified; and

(ii) Any claim by the practitioner, predicated upon the grounds set forth in paragraphs (d)(1)(i) through (d)(1)(iii) of this section, that the imposition of the identical discipline would be unwarranted and the reasons for that claim.

(c) *Effect of stay in another jurisdiction.* In the event the discipline imposed by another jurisdiction or disciplinary disqualification imposed in the Federal program or agency has been stayed, any reciprocal discipline imposed by the USPTO may be deferred until the stay expires.

(d) *Hearing and discipline to be imposed.* (1) The USPTO Director shall hear the matter on the documentary record unless the USPTO Director determines that an oral hearing is necessary. After expiration of the forty days from the date of the notice pursuant to provisions of paragraph (b) of this section, the USPTO Director shall consider any timely filed response and impose the identical discipline unless the practitioner or OED Director clearly and convincingly demonstrates, or the USPTO Director finds, that it clearly appears upon the face of the record from which the discipline is predicated, that:

(i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(ii) There was such infirmity of proof establishing the conduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject; or

(iii) The imposition of the same discipline by the Office would result in grave injustice.

(2) If the USPTO Director determines that any of the elements of paragraphs (d)(1)(i) through (d)(1)(iii) of this section exist, the USPTO Director shall enter an appropriate order.

(e) *Conclusiveness of adjudication in another jurisdiction or Federal agency or program.* In all other respects, a final adjudication in another jurisdiction or Federal agency or program that a practitioner, whether or not admitted in that jurisdiction, has been guilty of misconduct shall establish conclusively the ground for discipline for purposes of a disciplinary proceeding in this Office.

(f) *Reciprocal discipline—action where practice has ceased.* Upon request by the practitioner, reciprocal discipline may be imposed *nunc pro tunc* only if the practitioner promptly notified the OED Director of his or her discipline or disciplinary disqualification in another jurisdiction, and establishes by clear and convincing evidence that the practitioner voluntarily ceased all activities related to practice before the Office and complied with all provisions of § 11.58. The effective date of any suspension or disbarment imposed *nunc pro tunc* shall be the date the practitioner voluntarily ceased all activities related to practice before the Office and complied with all provisions of § 11.58.

(g) *Reinstatement following reciprocal discipline proceeding.* A practitioner may petition for reinstatement under conditions set forth in § 11.60 no sooner than completion of the period of reciprocal discipline imposed, and compliance with all provisions of § 11.58.

§ 11.25 Interim suspension and discipline based upon conviction of committing a serious crime.

(a) *Notification of OED Director.* Upon being convicted of a crime in a court of the United States, any State, or a foreign country, a practitioner subject to the disciplinary jurisdiction of the Office shall notify the OED Director in writing of the same within thirty days from the date of such conviction. Upon being advised or learning that a practitioner subject to the disciplinary jurisdiction of the Office has been convicted of a crime, the OED Director shall make a preliminary determination whether the crime constitutes a serious crime warranting immediate interim suspension. If the crime is a serious crime, the OED Director shall file with the USPTO Director proof of the conviction and request the USPTO Director to issue a notice and order set forth in paragraph (b)(2) of this section. The OED Director shall in addition, without Committee on Discipline authorization, file with the USPTO Director a complaint against the practitioner complying with § 11.34 predicated upon the conviction of a serious crime. If the crime is not a serious crime, the OED Director shall process the matter in the same manner as any other information or evidence of a possible violation of an imperative Rule of Professional Conduct coming to the attention of the OED Director.

(b) *Immediate interim suspension and referral for disciplinary proceeding.* All proceedings under this section shall be handled as expediously as possible.

(1) The USPTO Director has authority to place a practitioner on interim suspension. The USPTO Director may refer any portion of the interim suspension proceeding to a hearing officer with appropriate directions.

(2) *Notification served on practitioner.* Upon receipt of a certified copy of the court record, docket entry or judgment demonstrating that the practitioner has been so convicted together with the complaint, the USPTO Director shall forthwith issue a notice directed to the practitioner in accordance with § 11.35(a), (b) or (c), and to the OED Director, containing:

(i) A copy of the court record, docket entry, or judgment of conviction;

(ii) A copy of the complaint; and

(iii) An order directing the practitioner to inform the USPTO Director, within forty days of the date of the notice, of any predicate challenge establishing that interim suspension may not properly be ordered, such as the crime did not constitute a serious crime or that the practitioner is not the individual found guilty.

(3) *Hearing and interim suspension.* The matter shall be heard on the documentary record for the order for interim suspension and the practitioner's assertion of any predicate challenge.

(i) *Interim Suspension.* The USPTO Director shall place a practitioner on interim suspension immediately upon proof that the practitioner has been convicted of a serious crime, regardless of the pendency of any appeal.

(ii) *Termination.* The USPTO Director has authority to terminate an interim suspension. In the interest of justice, the USPTO Director may terminate an interim suspension at any time upon a showing of extraordinary circumstances, after affording the OED Director an opportunity to respond to the request to terminate interim suspension.

(4) *Referral for disciplinary proceeding.* Upon entering an order of interim suspension, the USPTO Director shall refer the matter to the OED Director for institution of a formal disciplinary proceeding. A disciplinary proceeding so instituted shall be stayed by the hearing officer until all direct appeals from the conviction are concluded. Review of the initial decision of the hearing officer shall be pursuant to § 11.55.

(c) *Proof of conviction and guilt.* (1) *Conviction in the United States.* For purposes of a hearing for interim suspension and a hearing on the formal charges in a complaint filed as a consequence of the conviction, a certified copy of the court record, docket entry, or judgment of conviction in a court of the United States or any State shall be conclusive evidence that the practitioner committed the crime and was convicted. The sole issue

before the hearing officer shall be the nature and extent of the discipline to be imposed as a consequence of the conviction.

(2) *Conviction in a foreign country.* For purposes of a hearing for interim suspension and on the formal charges filed as a result of a finding of guilt, a certified copy of the court record, docket entry, or judgment of conviction in a court of a foreign country shall be conclusive evidence of the conviction and of any imposed confinement or commitment to imprisonment, and *prima facie* evidence of the practitioner's commission of the crime of which the practitioner has been convicted. However, nothing in this paragraph shall preclude the practitioner from demonstrating in any hearing by clear and convincing evidence:

(i) That the procedure in the foreign country was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process and rebut the *prima facie* evidence of guilt; or

(ii) Material facts to be considered when determining if a serious crime was committed and whether a disciplinary sanction should be entered.

(d) *Crime determined not to be serious crime.* If the USPTO Director determines that the crime is not a serious crime, the matter shall be referred to the OED Director for investigation under § 11.22 and processing as is appropriate.

(e) *Reinstatement.* (1) *Upon reversal or setting aside a finding of guilt or a conviction.* If a practitioner suspended solely under the provisions of paragraph (b) of this section demonstrates that the underlying finding of guilt or conviction of serious crimes has been reversed or vacated, the order for interim suspension shall be vacated and the practitioner be placed on active status unless the finding of guilt was reversed or the conviction was set aside with respect to less than all serious crimes for which the practitioner was found guilty or convicted. The vacating of the interim suspension will not terminate any other disciplinary proceeding then pending against the practitioner, the disposition of which shall be determined by the hearing officer before whom the matter is pending, on the basis of all available evidence other than the finding of guilt or conviction.

(2) *Following conviction of a serious crime.* Any practitioner convicted of a serious crime and disciplined in whole or in part in regard to that conviction, may petition for reinstatement under conditions set forth in § 11.60 no sooner than five years after being discharged following completion of service of his or her sentence, or after completion of service under probation or parole, whichever is later.

(f) *Notice to clients and others of interim suspension.* An interim suspension under this section shall constitute a suspension of the practitioner for the purpose of § 11.58.

§ 11.26 Settlement.

Before or after a complaint under § 11.24 is filed, a settlement conference may occur between the OED Director and the practitioner. Any offers of compromise and any statements made during the course of settlement discussions shall not be admissible in subsequent proceedings. The OED Director may recommend to the USPTO Director any settlement terms deemed appropriate, including steps taken to correct or mitigate the matter forming the basis of the action, or to prevent recurrence of the same or similar conduct. A settlement agreement shall be effective only upon entry of a final decision by the USPTO Director.

§ 11.27 Exclusion on consent.

(a) *Required affidavit.* The OED Director may confer with a practitioner concerning possible violations by the practitioner of the Rules of Professional Conduct whether or not a disciplinary proceeding has been instituted. A practitioner who is the subject of an investigation or a pending disciplinary proceeding based on allegations of grounds for discipline, and who desires to resign, may only do so by consenting to exclusion and delivering to the OED Director an affidavit declaring the consent of the practitioner to exclusion and stating:

(1) That the practitioner's consent is freely and voluntarily rendered, that the practitioner is not being subjected to coercion or duress, and that the practitioner is fully aware of the implications of consenting to exclusion;

(2) That the practitioner is aware that there is currently pending an investigation into, or a proceeding involving allegations of misconduct, the nature of which shall be specifically set forth in the affidavit to the satisfaction of the OED Director;

(3) That the practitioner acknowledges that, if and when he or she applies for reinstatement under § 11.60, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that:

(i) The facts upon which the investigation or complaint is based are true, and

(ii) The practitioner could not have successfully defended himself or herself against the allegations in the investigation or charges in the complaint.

(b) *Action by the USPTO Director.* Upon receipt of the required affidavit, the OED Director shall file the affidavit and any related papers with the USPTO Director for review and approval. Upon such approval, the USPTO Director will enter an order excluding the practitioner on consent and providing other appropriate actions. Upon entry of the order, the excluded practitioner shall comply with the requirements set forth in § 11.58.

(c) When an affidavit under paragraph (a) of this section is received after a complaint under § 11.34 has been filed, the OED Director shall notify the hearing officer. The hearing officer shall enter an order transferring the disciplinary proceeding to the USPTO Director, who may enter an order excluding the practitioner on consent.

(d) *Reinstatement.* Any practitioner excluded on consent under this section may not petition for reinstatement for five years. A practitioner excluded on consent who intends to reapply for admission to practice before the Office must comply with the provisions of § 11.58, and apply for reinstatement in accordance with § 11.60. Failure to comply with the provisions of § 11.58 constitutes grounds for denying an application for reinstatement.

§ 11.28 Incapacitated practitioners in a disciplinary proceeding.

(a) *Holding in abeyance a disciplinary proceeding because of incapacitation due to a current disability or addiction.* (1) *Practitioner's motion.* In the course of a disciplinary proceeding under § 11.32, but before the date set by the hearing officer for a hearing, the practitioner may file a motion requesting the hearing officer to enter an order holding such proceeding in abeyance based on the contention that the practitioner is suffering from a disability or addiction that makes it impossible for the practitioner to adequately defend the charges in the disciplinary proceeding.

(i) *Content of practitioner's motion.* The practitioner's motion shall, in addition to any other requirement of § 11.43, include or have attached thereto:

(A) A brief statement of all material facts;

(B) Affidavits, medical reports, official records, or other documents setting forth or establishing any of the material facts on which the practitioner is relying;

(C) A statement that the practitioner acknowledges the alleged incapacity by reason of disability or addiction;

(D) Written consent that the practitioner be transferred to disability inactive status if the motion is granted; and

(E) A written agreement by the practitioner to not practice before the Office in patent, trademark or other non-patent cases while on disability inactive status.

(ii) *Response.* The OED Director's response to any motion hereunder shall be served and filed within fourteen days after service of the practitioner's motion unless such time is shortened or enlarged by the hearing officer for good cause shown, and shall set forth the following:

(A) All objections, if any, to the actions requested in the motion;

(B) An admission, denial or allegation of lack of knowledge with respect to each of the material facts in the practitioner's motion and accompanying documents; and

(C) Affidavits, medical reports, official records, or other documents setting forth facts on which the OED Director intends to rely for purposes of disputing or denying any material fact set forth in the practitioner's papers.

(2) *Disposition of practitioner's motion.* The hearing officer shall decide the motion and any response thereto. The motion shall be granted upon a showing of good cause to believe the practitioner to be incapacitated as alleged. If the required showing is made, the hearing officer shall enter an order holding the disciplinary proceeding in abeyance. In the case of addiction to drugs or intoxicants, the order may provide that the practitioner will not be returned to active status absent satisfaction of specified conditions. Upon receipt of the order, the OED Director shall place the practitioner on disability inactive status, give notice to the practitioner, cause notice to be published, and give notice to appropriate authorities in the Office that the practitioner has been placed on disability inactive status. The practitioner shall comply with the provisions of § 11.58, and shall not engage in practice before the Office in patent, trademark and other non-patent law until a determination is made of the practitioner's capability to resume practice before the Office in a proceeding under paragraph (c) or paragraph (d) of this section.

(b) *Motion for reactivation.* Any practitioner transferred to disability inactive status in a disciplinary proceeding may file with the hearing officer a motion for reactivation once a year beginning at any time not less than one year after the initial effective date of inactivation, or once during any shorter interval provided by the order issued pursuant to paragraph (a)(2) of this section or any modification thereof. If the motion is granted, the disciplinary proceeding shall resume under such schedule as may be established by the hearing officer.

(c) *Contents of motion for reactivation.* A motion by the practitioner for reactivation alleging that a practitioner has recovered from a prior disability or addiction shall be accompanied by all available medical reports or similar documents relating thereto. The hearing officer may require the practitioner to present such other information as is necessary.

(d) *OED Director's motion to resume disciplinary proceeding held in abeyance.* (1) The OED Director, having good cause to believe a practitioner is no longer incapacitated, may file a motion requesting the hearing officer to terminate a prior order holding in abeyance any pending proceeding because of the practitioner's disability or addiction. The hearing officer shall decide the matter presented by the OED Director's motion hereunder based on the affidavits and other admissible evidence attached to the OED Director's motion and the practitioner's response. The OED Director bears the burden of showing by clear and convincing evidence that the practitioner is able to defend himself or herself. If there is any genuine issue as to one or more material facts, the hearing officer will hold an evidentiary hearing.

(2) The hearing officer, upon receipt of the OED Director's motion under paragraph (d)(1) of this section, may direct the practitioner to file a response. If the hearing officer requires the practitioner to file a response, the practitioner must present clear and convincing evidence that the prior self-alleged disability or addiction continues to make it impossible for the practitioner to defend himself or herself in the underlying proceeding being held in abeyance.

(e) *Action by the hearing officer.* If, in deciding a motion under paragraph (b) or (d) of this section, the hearing officer determines that there is good cause to believe the practitioner is not incapacitated from defending himself or herself, or is not incapacitated from practicing before the Office, the hearing officer shall take such action as is deemed appropriate, including the entry of an order directing the reactivation of the practitioner and resumption of the disciplinary proceeding.

§§ 11.29–11.31 [Reserved]

§ 11.32 Initiating a disciplinary proceeding.

If after conducting an investigation under § 11.22(a) the OED Director is of the opinion that grounds exist for discipline under § 11.19(b)(3)–(5), the OED Director, and after complying where necessary with the provisions of 5 U.S.C. 558(c), shall convene a meeting of a panel of the Committee on Discipline. The panel of the Committee on Discipline shall then determine as specified in § 11.23(b) whether a disciplinary proceeding shall be instituted. If the panel of the Committee on Discipline determines that probable cause exists to bring charges under § 11.19(b)(3)–(5), the OED Director shall institute a disciplinary proceeding by filing a complaint under § 11.34.

§ 11.33 [Reserved]

§ 11.34 Complaint.

(a) A complaint instituting a disciplinary proceeding under § 11.25(b)(4) or 11.32 shall:

(1) Name the practitioner who may then be referred to as the ''respondent'';

(2) Give a plain and concise description of the respondent's alleged grounds for discipline;

(3) State the place and time, not less than thirty days from the date the complaint is filed, for filing an answer by the respondent;

(4) State that a decision by default may be entered if an answer is not timely filed by the respondent; and

(5) Be signed by the OED Director.

(b) A complaint will be deemed sufficient if it fairly informs the respondent of any grounds for discipline, and where applicable, the imperative USPTO Rules of Professional Conduct that form the basis for the disciplinary proceeding so that the respondent is able to adequately prepare a defense.

(c) The complaint shall be filed in the manner prescribed by the USPTO Director.

§ 11.35 Service of complaint.

(a) A complaint may be served on a respondent in any of the following methods:

(1) By delivering a copy of the complaint personally to the respondent, in which case the individual who gives the complaint to the respondent shall file an affidavit with the OED Director indicating the time and place the complaint was handed to the respondent.

(2) By mailing a copy of the complaint by ''Express Mail,'' first-class mail, or any delivery service that provides

ability to confirm delivery or attempted delivery to:

(i) A respondent who is a registered practitioner at the address provided to OED pursuant to § 11.11, or

(ii) A respondent who is a nonregistered practitioner at the last address for the respondent known to the OED Director.

(3) By any method mutually agreeable to the OED Director and the respondent.

(4) In the case of a respondent who resides outside the United States, by sending a copy of the complaint by any delivery service that provides ability to confirm delivery or attempted delivery, to:

(i) A respondent who is a registered practitioner at the address provided to OED pursuant to § 11.11; or

(ii) A respondent who is a nonregistered practitioner at the last address for the respondent known to the OED Director.

(b) If a copy of the complaint cannot be delivered to the respondent through any one of the procedures in paragraph (a) of this section, the OED Director shall serve the respondent by causing an appropriate notice to be published in the Official Gazette for two consecutive weeks, in which case, the time for filing an answer shall be thirty days from the second publication of the notice. Failure to timely file an answer will constitute an admission of the allegations in the complaint in accordance with paragraph (d) of § 11.36, and the hearing officer may enter an initial decision on default.

(c) If the respondent is known to the OED Director to be represented by an attorney under § 11.40(a), a copy of the complaint shall be served on the attorney in lieu of the respondent in the manner provided for in paragraph (a) or (b) of this section.

§ 11.36 Answer to complaint.

(a) *Time for answer.* An answer to a complaint shall be filed within the time set in the complaint but in no event shall that time be less than thirty days from the date the complaint is filed.

(b) *With whom filed.* The answer shall be filed in writing with the hearing officer at the address specified in the complaint. The hearing officer may extend the time for filing an answer once for a period of no more than thirty days upon a showing of good cause, provided a motion requesting an extension of time is filed within thirty days after the date the complaint is served on respondent. A copy of the answer, and any exhibits or attachments thereto, shall be served on the OED Director.

(c) *Content.* The respondent shall include in the answer a statement of the facts that constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the complaint. The respondent shall not deny a material allegation in the complaint that the respondent knows to be true or state that respondent is without sufficient information to form a belief as to the truth of an allegation when in fact the respondent possesses that information. The respondent shall also state affirmatively in the answer special matters of defense and any intent to raise a disability as a mitigating factor. If respondent intends to raise a special matter of defense or disability, the answer shall specify the defense or disability, its nexus to the misconduct, and the reason it provides a defense or mitigation. A respondent who fails to do so cannot rely on a special matter of defense or disability. The hearing officer may, for good cause, allow the respondent to file the statement late, grant additional hearing preparation time, or make other appropriate orders.

(d) *Failure to deny allegations in complaint.* Every allegation in the complaint that is not denied by a respondent in the answer shall be deemed to be admitted and may be considered proven. The hearing officer at any hearing need receive no further evidence with respect to that allegation.

(e) *Default judgment.* Failure to timely file an answer will constitute an admission of the allegations in the complaint and may result in entry of default judgment.

§ 11.37 [Reserved]

§ 11.38 Contested case.

Upon the filing of an answer by the respondent, a disciplinary proceeding shall be regarded as a contested case within the meaning of 35 U.S.C. 24. Evidence obtained by a subpoena issued under 35 U.S.C. 24 shall not be admitted into the record or considered unless leave to proceed under 35 U.S.C. 24 was previously authorized by the hearing officer.

§ 11.39 Hearing officer; appointment; responsibilities; review of interlocutory orders; stays.

(a) *Appointment.* A hearing officer, appointed by the USPTO Director under 5 U.S.C. 3105 or 35 U.S.C. 32, shall conduct disciplinary proceedings as provided by this Part.

(b) *Independence of the Hearing Officer.* (1) A hearing officer appointed in accordance with paragraph (a) of this section shall not be subject to first level or second level supervision by the USPTO Director or his or her designee.

(2) A hearing officer appointed in accordance with paragraph (a) of this section shall not be subject to supervision of the person(s) investigating or prosecuting the case.

(3) A hearing officer appointed in accordance with paragraph (a) of this section shall be impartial, shall not be an individual who has participated in any manner in the decision to initiate the proceedings, and shall not have been employed under the immediate supervision of the practitioner.

(4) A hearing officer appointed in accordance with paragraph (a) of this section shall be admitted to practice law and have suitable experience and training to conduct the hearing, reach a determination, and render an initial decision in an equitable manner.

(c) *Responsibilities.* The hearing officer shall have authority, consistent with specific provisions of these regulations, to:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and other requests;

(3) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(4) Authorize the taking of a deposition of a witness in lieu of personal appearance of the witness before the hearing officer;

(5) Determine the time and place of any hearing and regulate its course and conduct;

(6) Hold or provide for the holding of conferences to settle or simplify the issues;

(7) Receive and consider oral or written arguments on facts or law;

(8) Adopt procedures and modify procedures for the orderly disposition of proceedings;

(9) Make initial decisions under §§ 11.25 and 11.54; and

(10) Perform acts and take measures as necessary to promote the efficient, timely, and impartial conduct of any disciplinary proceeding.

(d) *Time for making initial decision.* The hearing officer shall set times and exercise control over a disciplinary proceeding such that an initial decision under § 11.54 is normally issued within nine months of the date a complaint is filed. The hearing officer may, however, issue an initial decision more than nine months after a complaint is filed if there exist circumstances, in his or her opinion, that preclude issuance of an initial decision within nine months of the filing of the complaint.

(e) *Review of interlocutory orders.* The USPTO Director will not review an interlocutory order of a hearing officer except:

(1) When the hearing officer shall be of the opinion:

(i) That the interlocutory order involves a controlling question of

procedure or law as to which there is a substantial ground for a difference of opinion, and

(ii) That an immediate decision by the USPTO Director may materially advance the ultimate termination of the disciplinary proceeding, or

(2) In an extraordinary situation where the USPTO Director deems that justice requires review.

(f) *Stays pending review of interlocutory order.* If the OED Director or a respondent seeks review of an interlocutory order of a hearing officer under paragraph (b)(2) of this section, any time period set for taking action by the hearing officer shall not be stayed unless ordered by the USPTO Director or the hearing officer.

(g) The hearing officer shall engage in no *ex parte* discussions with any party on the merits of the complaint, beginning with appointment and ending when the final agency decision is issued.

§ 11.40 Representative for OED Director or respondent.

(a) A respondent may represent himself or herself, or be represented by an attorney before the Office in connection with an investigation or disciplinary proceeding. The attorney shall file a written declaration that he or she is an attorney within the meaning of § 11.1 and shall state:

(1) The address to which the attorney wants correspondence related to the investigation or disciplinary proceeding sent, and

(2) A telephone number where the attorney may be reached during normal business hours.

(b) The Deputy General Counsel for Intellectual Property and Solicitor, and attorneys in the Office of the Solicitor shall represent the OED Director. The attorneys representing the OED Director in disciplinary proceedings shall not consult with the USPTO Director, the General Counsel, or the Deputy General Counsel for General Law regarding the proceeding. The General Counsel and the Deputy General Counsel for General Law shall remain screened from the investigation and prosecution of all disciplinary proceedings in order that they shall be available as counsel to the USPTO Director in deciding disciplinary proceedings unless access is appropriate to perform their duties. After a final decision is entered in a disciplinary proceeding, the OED Director and attorneys representing the OED Director shall be available to counsel the USPTO Director, the General Counsel, and the Deputy General Counsel for General Law in any further proceedings.

§ 11.41 Filing of papers.

(a) The provisions of §§ 1.8 and 2.197 of this subchapter do not apply to disciplinary proceedings. All papers filed after the complaint and prior to entry of an initial decision by the hearing officer shall be filed with the hearing officer at an address or place designated by the hearing officer.

(b) All papers filed after entry of an initial decision by the hearing officer shall be filed with the USPTO Director. A copy of the paper shall be served on the OED Director. The hearing officer or the OED Director may provide for filing papers and other matters by hand, by ''Express Mail,'' or by other means.

§ 11.42 Service of papers.

(a) All papers other than a complaint shall be served on a respondent who is represented by an attorney by:

(1) Delivering a copy of the paper to the office of the attorney; or

(2) Mailing a copy of the paper by first-class mail, ''Express Mail,'' or other delivery service to the attorney at the address provided by the attorney under § 11.40(a)(1); or

(3) Any other method mutually agreeable to the attorney and a representative for the OED Director.

(b) All papers other than a complaint shall be served on a respondent who is not represented by an attorney by:

(1) Delivering a copy of the paper to the respondent; or

(2) Mailing a copy of the paper by first-class mail, ''Express Mail,'' or other delivery service to the respondent at the address to which a complaint may be served or such other address as may be designated in writing by the respondent; or

(3) Any other method mutually agreeable to the respondent and a representative of the OED Director.

(c) A respondent shall serve on the representative for the OED Director one copy of each paper filed with the hearing officer or the OED Director. A paper may be served on the representative for the OED Director by:

(1) Delivering a copy of the paper to the representative; or

(2) Mailing a copy of the paper by first-class mail, ''Express Mail,'' or other delivery service to an address designated in writing by the representative; or

(3) Any other method mutually agreeable to the respondent and the representative.

(d) Each paper filed in a disciplinary proceeding shall contain therein a certificate of service indicating:

(1) The date of which service was made; and

(2) The method by which service was made.

(e) The hearing officer or the USPTO Director may require that a paper be served by hand or by ''Express Mail.''

(f) Service by mail is completed when the paper mailed in the United States is placed into the custody of the U.S. Postal Service.

§ 11.43 Motions.

Motions may be filed with the hearing officer. The hearing officer will determine whether replies to responses will be authorized and the time period for filing such a response. No motion shall be filed with the hearing officer unless such motion is supported by a written statement by the moving party that the moving party or attorney for the moving party has conferred with the opposing party or attorney for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach agreement. If the parties prior to a decision on the motion resolve issues raised by a motion presented to the hearing officer, the parties shall promptly notify the hearing officer.

§ 11.44 Hearings.

(a) The hearing officer shall preside at hearings in disciplinary proceedings. If the hearing officer determines that an oral hearing is appropriate, the hearing officer shall set the time and place for a hearing. In setting a time and place, the hearing officer shall normally give preference to a Federal facility in the district where the Office's principal office is located or Washington, DC, giving due regard to the convenience and needs of the parties, witnesses, or their representatives. In cases involving an incarcerated respondent, any necessary oral hearing may be held at the location of incarceration. Oral hearings will be stenographically recorded and transcribed, and the testimony of witnesses will be received under oath or affirmation. The hearing officer shall conduct the hearing as if the proceeding were subject to 5 U.S.C. 556. A copy of the transcript of the hearing shall become part of the record. The OED Director and respondent shall make their own arrangements to obtain a copy of the transcript.

(b) If the respondent to a disciplinary proceeding fails to appear at the hearing after a notice of hearing has been given by the hearing officer, the hearing officer may deem the respondent to have waived the right to a hearing and may proceed with the hearing in the absence of the respondent.

(c) A hearing under this section will not be open to the public except that the hearing officer may grant a request by a respondent to open his or her hearing to

the public and make the record of the disciplinary proceeding available for public inspection, *provided,* Agreement is reached in advance to exclude from public disclosure information which is privileged or confidential under applicable laws or regulations. If a disciplinary proceeding results in disciplinary sanction against a practitioner, subject to § 11.59(b) the record of the entire disciplinary proceeding, including any settlement agreement, will be available for public inspection.

§ 11.45 Amendment of pleadings.

The OED Director may, without Committee on Discipline authorization, but with the authorization of the hearing officer, amend the complaint to include additional charges based upon conduct committed before or after the complaint was filed. If amendment of the complaint is authorized, the hearing officer shall authorize amendment of the answer. Any party who would otherwise be prejudiced by the amendment will be given reasonable opportunity to meet the allegations in the complaint or answer as amended, and the hearing officer shall make findings on any issue presented by the complaint or answer as amended.

§§ 11.46–11.48 [Reserved]

§ 11.49 Burden of proof.

In a disciplinary proceeding, the OED Director shall have the burden of proving his or her case by clear and convincing evidence and a respondent shall have the burden of proving any affirmative defense by clear and convincing evidence.

§ 11.50 Evidence.

(a) *Rules of evidence.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings in disciplinary proceedings. However, the hearing officer shall exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* Depositions of witnesses taken pursuant to § 11.51 may be admitted as evidence.

(c) *Government documents.* Official documents, records, and papers of the Office, including, but not limited to, all papers in the file of a disciplinary investigation, are admissible without extrinsic evidence of authenticity. These documents, records, and papers may be evidenced by a copy certified as correct by an employee of the Office.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the hearing officer may authorize the withdrawal of the exhibit subject to any conditions the hearing officer deems appropriate.

(e) *Objections.* Objections to evidence will be in short form, stating the grounds of objection. Objections and rulings on objections will be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

§ 11.51 Depositions.

(a) Depositions for use at the hearing in lieu of personal appearance of a witness before the hearing officer may be taken by respondent or the OED Director upon a showing of good cause and with the approval of, and under such conditions as may be deemed appropriate by, the hearing officer. Depositions may be taken upon oral or written questions, upon not less than ten days' written notice to the other party, before any officer authorized to administer an oath or affirmation in the place where the deposition is to be taken. The parties may waive the requirement of ten days' notice and depositions may then be taken of a witness at a time and place mutually agreed to by the parties. When a deposition is taken upon written questions, copies of the written questions will be served upon the other party with the notice, and copies of any written cross-questions will be served by hand or ''Express Mail'' not less than five days before the date of the taking of the deposition unless the parties mutually agree otherwise. A party on whose behalf a deposition is taken shall file a copy of a transcript of the deposition signed by a court reporter with the hearing officer and shall serve one copy upon the opposing party. Expenses for a court reporter and preparing, serving, and filing depositions shall be borne by the party at whose instance the deposition is taken. Depositions may not be taken to obtain discovery, except as provided for in paragraph (b) of this section.

(b) When the OED Director and the respondent agree in writing, a deposition of any witness who will appear voluntarily may be taken under such terms and conditions as may be mutually agreeable to the OED Director and the respondent. The deposition shall not be filed with the hearing officer and may not be admitted in evidence before the hearing officer unless he or she orders the deposition admitted in evidence. The admissibility of the deposition shall lie within the discretion of the hearing officer who may reject the deposition on any reasonable basis including the fact that demeanor is involved and that the witness should have been called to appear personally before the hearing officer.

§ 11.52 Discovery.

Discovery shall not be authorized except as follows:

(a) After an answer is filed under § 11.36 and when a party establishes that discovery is reasonable and relevant, the hearing officer, under such conditions as he or she deems appropriate, may order an opposing party to:

(1) Answer a reasonable number of written requests for admission or interrogatories;

(2) Produce for inspection and copying a reasonable number of documents; and

(3) Produce for inspection a reasonable number of things other than documents.

(b) Discovery shall not be authorized under paragraph (a) of this section of any matter which:

(1) Will be used by another party solely for impeachment;

(2) Is not available to the party under 35 U.S.C. 122;

(3) Relates to any other disciplinary proceeding;

(4) Relates to experts except as the hearing officer may require under paragraph (e) of this section.

(5) Is privileged; or

(6) Relates to mental impressions, conclusions, opinions, or legal theories of any attorney or other representative of a party.

(c) The hearing officer may deny discovery requested under paragraph (a) of this section if the discovery sought:

(1) Will unduly delay the disciplinary proceeding;

(2) Will place an undue burden on the party required to produce the discovery sought; or

(3) Consists of information that is available:

(i) Generally to the public;

(ii) Equally to the parties; or

(iii) To the party seeking the discovery through another source.

(d) Prior to authorizing discovery under paragraph (a) of this section, the hearing officer shall require the party seeking discovery to file a motion (§ 11.43) and explain in detail, for each request made, how the discovery sought is reasonable and relevant to an issue actually raised in the complaint or the answer.

(e) The hearing officer may require parties to file and serve, prior to any hearing, a pre-hearing statement that contains:

(1) A list (together with a copy) of all proposed exhibits to be used in connection with a party's case-in-chief;

(2) A list of proposed witnesses;

(3) As to each proposed expert witness:

(i) An identification of the field in which the individual will be qualified as an expert;

(ii) A statement as to the subject matter on which the expert is expected to testify; and

(iii) A statement of the substance of the facts and opinions to which the expert is expected to testify;

(4) Copies of memoranda reflecting respondent's own statements to administrative representatives.

(f) After a witness testifies for a party, if the opposing party requests, the party may be required to produce, prior to cross-examination, any documents relied upon by the witness in giving his or her testimony.

§ 11.53 Proposed findings and conclusions; post-hearing memorandum.

Except in cases in which the respondent has failed to answer the complaint or amended complaint, the hearing officer, prior to making an initial decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and a post-hearing memorandum in support of the proposed findings and conclusions.

§ 11.54 Initial decision of hearing officer.

(a) The hearing officer shall make an initial decision in the case. The decision will include:

(1) A statement of findings of fact and conclusions of law, as well as the reasons or bases for those findings and conclusions with appropriate references to the record, upon all the material issues of fact, law, or discretion presented on the record, and

(2) An order of default judgment, of suspension or exclusion from practice, of reprimand, or an order dismissing the complaint. The hearing officer shall transmit a copy of the decision to the OED Director and to the respondent. After issuing the decision, the hearing officer shall transmit the entire record to the OED Director. In the absence of an appeal to the USPTO Director, the decision of the hearing officer, including a default judgment, will, without further proceedings, become the decision of the USPTO Director thirty days from the date of the decision of the hearing officer.

(b) The initial decision of the hearing officer shall explain the reason for any default judgment, reprimand, suspension, or exclusion. In determining any sanction, the following should normally be considered:

(1) The public interest;

(2) The seriousness of the grounds for discipline;

(3) The deterrent effects deemed necessary;

(4) The integrity of the legal and patent professions; and

(5) Any extenuating circumstances.

§ 11.55 Appeal to the USPTO Director.

(a) Within thirty days after the date of the initial decision of the hearing officer under §§ 11.25, or 11.54, either party may appeal to the USPTO Director. The appeal shall include the appellant's brief. If more than one appeal is filed, the party who files the appeal first is the appellant for purpose of this rule. If appeals are filed on the same day, the respondent is the appellant. If an appeal is filed, then the OED Director shall transmit the entire record to the USPTO Director. Any cross-appeal shall be filed within fourteen days after the date of service of the appeal pursuant to § 11.42, or thirty days after the date of the initial decision of the hearing officer, whichever is later. The cross-appeal shall include the cross-appellant's brief. Any appellee or cross-appellee brief must be filed within thirty days after the date of service pursuant to § 11.42 of an appeal or cross-appeal. Any reply brief must be filed within fourteen days after the date of service of any appellee or cross-appellee brief.

(b) An appeal or cross-appeal must include exceptions to the decisions of the hearing officer and supporting reasons for those exceptions. Any exception not raised will be deemed to have been waived and will be disregarded by the USPTO Director in reviewing the initial decision.

(c) All briefs shall:

(1) Be filed with the USPTO Director at the address set forth in § 1.1(a)(3)(ii) of this subchapter and served on the opposing party;

(2) Include separate sections containing a concise statement of the disputed facts and disputed points of law; and

(3) Be typed on 8½ by 11-inch paper, and shall comply with Rule 32(a)(4)-(6) of the Federal Rules of Appellate Procedure.

(d) An appellant's, cross-appellant's, appellee's, and cross-appellee's brief shall be no more than thirty pages in length, and comply with Rule 28(a)(2), (3), and (5) through (10) of the Federal Rules of Appellate Procedure. Any reply brief shall be no more than fifteen pages in length, and shall comply with Rule 28(a)(2), (3), (8), and (9) of the Federal Rules of Appellate Procedure.

(e) The USPTO Director may refuse entry of a nonconforming brief.

(f) The USPTO Director will decide the appeal on the record made before the hearing officer.

(g) Unless the USPTO Director permits, no further briefs or motions shall be filed.

(h) The USPTO Director may order reopening of a disciplinary proceeding in accordance with the principles that govern the granting of new trials. Any request to reopen a disciplinary proceeding on the basis of newly discovered evidence must demonstrate that the newly discovered evidence could not have been discovered by due diligence.

(i) In the absence of an appeal by the OED Director, failure by the respondent to appeal under the provisions of this section shall be deemed to be both acceptance by the respondent of the initial decision and waiver by the respondent of the right to further administrative or judicial review.

§ 11.56 Decision of the USPTO Director.

(a) The USPTO Director shall decide an appeal from an initial decision of the hearing officer. The USPTO Director may affirm, reverse, or modify the initial decision or remand the matter to the hearing officer for such further proceedings as the USPTO Director may deem appropriate. In making a final decision, the USPTO Director shall review the record or the portions of the record designated by the parties. The USPTO Director shall transmit a copy of the final decision to the OED Director and to the respondent.

(b) A final decision of the USPTO Director may dismiss a disciplinary proceeding, reverse or modify the initial decision, reprimand a practitioner, or may suspend or exclude the practitioner from practice before the Office. A final decision suspending or excluding a practitioner shall require compliance with the provisions of § 11.58. The final decision may also condition the reinstatement of the practitioner upon a showing that the practitioner has taken steps to correct or mitigate the matter forming the basis of the action, or to prevent recurrence of the same or similar conduct.

(c) The respondent or the OED Director may make a single request for reconsideration or modification of the decision by the USPTO Director if filed within twenty days from the date of entry of the decision. No request for reconsideration or modification shall be granted unless the request is based on newly discovered evidence or error of law or fact, and the requestor must demonstrate that any newly discovered evidence could not have been discovered any earlier by due diligence.

Such a request shall have the effect of staying the effective date of the order of discipline in the final decision. The decision by the USPTO Director is effective on its date of entry.

§ 11.57 Review of final decision of the USPTO Director.

(a) Review of the final decision by USPTO Director in a disciplinary case may be had, subject to § 11.55(d), by a petition filed in the United States District Court for the District of Columbia in accordance with the local rule of said court. 35 U.S.C. 32. The Respondent must serve the USPTO Director with the petition. Respondent must serve the petition in accordance with Rule 4 of the Federal Rules of Civil Procedure and § 104.2 of this Title.

(b) Except as provided for in § 11.56(c), an order for discipline in a final decision will not be stayed except on proof of exceptional circumstances.

§ 11.58 Duties of disciplined or resigned practitioner.

(a) An excluded, suspended or resigned practitioner shall not engage in any practice of patent, trademark and other non-patent law before the Office. An excluded, suspended or resigned practitioner will not be automatically reinstated at the end of his or her period of exclusion or suspension. An excluded, suspended or resigned practitioner must comply with the provisions of this section and §§ 11.12 and 11.60 to be reinstated. Failure to comply with the provisions of this section may constitute both grounds for denying reinstatement or readmission; and cause for further action, including seeking further exclusion, suspension, and for revocation of any pending probation.

(b) Unless otherwise ordered by the USPTO Director, any excluded, suspended or resigned practitioner shall:

(1) Within thirty days after the date of entry of the order of exclusion, suspension, or acceptance of resignation:

(i) File a notice of withdrawal as of the effective date of the exclusion, suspension or acceptance of resignation in each pending patent and trademark application, each pending reexamination and interference proceeding, and every other matter pending in the Office, together with a copy of the notices sent pursuant to paragraphs (b) and (c) of this section;

(ii) Provide notice to all bars of which the practitioner is a member and all clients the practitioner represents having immediate or prospective business before the Office in patent, trademark and other non-patent matters of the order of exclusion, suspension or resignation and of the practitioner's consequent inability to act as a practitioner after the effective date of the order; and that, if not represented by another practitioner, the client should act promptly to substitute another practitioner, or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;

(iii) Provide notice to the practitioner(s) for all opposing parties (or, to the parties in the absence of a practitioner representing the parties) in matters pending before the Office of the practitioner's exclusion, suspension or resignation and, that as a consequence, the practitioner is disqualified from acting as a practitioner regarding matters before the Office after the effective date of the suspension, exclusion or resignation, and state in the notice the mailing address of each client of the excluded, suspended or resigned practitioner who is a party in the pending matter;

(iv) Deliver to all clients having immediate or prospective business before the Office in patent, trademark or other non-patent matters any papers or other property to which the clients are entitled, or shall notify the clients and any co-practitioner of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;

(v) Relinquish to the client, or other practitioner designated by the client, all funds for practice before the Office, including any legal fees paid in advance that have not been earned and any advanced costs not expended;

(vi) Take any necessary and appropriate steps to remove from any telephone, legal, or other directory any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice patent, trademark, or other non-patent law before the Office; and

(vii) Serve all notices required by paragraphs (b)(1)(ii) and (b)(1)(iii) of this section by certified mail, return receipt requested, unless mailed abroad. If mailed abroad, all notices shall be served with a receipt to be signed and returned to the practitioner.

(2) Within forty-five days after entry of the order of suspension, exclusion, or of acceptance of resignation, the practitioner shall file with the OED Director an affidavit of compliance certifying that the practitioner has fully complied with the provisions of the order, this section, and with the imperative USPTO Rules of Professional Conduct for withdrawal from representation. Appended to the affidavit of compliance shall be:

(i) A copy of each form of notice, the names and addressees of the clients, practitioners, courts, and agencies to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise ordered by the USPTO Director;

(ii) A schedule showing the location, title and account number of every bank account designated as a client or trust account, deposit account in the Office, or other fiduciary account, and of every account in which the practitioner holds or held as of the entry date of the order any client, trust, or fiduciary funds for practice before the Office;

(iii) A schedule describing the practitioner's disposition of all client and fiduciary funds for practice before the Office in the practitioner's possession, custody or control as of the date of the order or thereafter;

(iv) Such proof of the proper distribution of said funds and the closing of such accounts as has been requested by the OED Director, including copies of checks and other instruments;

(v) A list of all other State, Federal, and administrative jurisdictions to which the practitioner is admitted to practice; and

(vi) An affidavit describing the precise nature of the steps taken to remove from any telephone, legal, or other directory any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice patent, trademark, or other non-patent law before the Office. The affidavit shall also state the residence or other address of the practitioner to which communications may thereafter be directed, and list all State and Federal jurisdictions, and administrative agencies to which the practitioner is admitted to practice. The OED Director may require such additional proof as is deemed necessary. In addition, for the period of discipline, an excluded or suspended practitioner shall continue to file a statement in accordance with § 11.11(a), regarding any change of residence or other address to which communications may thereafter be directed, so that the excluded or suspended practitioner may be located if a grievance is received regarding any conduct occurring before or after the

exclusion or suspension. The practitioner shall retain copies of all notices sent and shall maintain complete records of the steps taken to comply with the notice requirements.

(3) Not hold himself or herself out as authorized to practice law before the Office.

(4) Not advertise the practitioner's availability or ability to perform or render legal services for any person having immediate or prospective business before the Office.

(5) Not render legal advice or services to any person having immediate or prospective business before the Office as to that business.

(6) Promptly take steps to change any sign identifying a practitioner's or the practitioner's firm's office and practitioner's or the practitioner's firm's stationery to delete therefrom any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice law before the Office.

(c) An excluded, suspended or resigned practitioner, after entry of the order of exclusion or suspension, or acceptance of resignation, shall not accept any new retainer regarding immediate or prospective business before the Office, or engage as a practitioner for another in any new case or legal matter regarding practice before the Office. The excluded, suspended or resigned practitioner shall be granted limited recognition for a period of thirty days. During the thirty-day period of limited recognition, the excluded, suspended or resigned practitioner shall conclude work on behalf of a client on any matters that were pending before the Office on the date of entry of the order of exclusion or suspension, or acceptance of resignation. If such work cannot be concluded, the excluded, suspended or resigned practitioner shall so advise the client so that the client may make other arrangements.

(d) *Required records.* An excluded, suspended or resigned practitioner shall keep and maintain records of the various steps taken under this section, so that in any subsequent proceeding proof of compliance with this section and with the exclusion or suspension order will be available. The OED Director will require the practitioner to submit such proof as a condition precedent to the granting of any petition for reinstatement.

(e) An excluded, suspended or resigned practitioner who aids another practitioner in any way in the other practitioner's practice of law before the Office, may, under the direct supervision of the other practitioner, act as a paralegal for the other practitioner or perform other services for the other practitioner which are normally performed by laypersons, provided:

(1) The excluded, suspended or resigned practitioner is a salaried employee of:

(i) The other practitioner;

(ii) The other practitioner's law firm; or

(iii) A client-employer who employs the other practitioner as a salaried employee;

(2) The other practitioner assumes full professional responsibility to any client and the Office for any work performed by the excluded, suspended or resigned practitioner for the other practitioner;

(3) The excluded, suspended or resigned practitioner does not:

(i) Communicate directly in writing, orally, or otherwise with a client of the other practitioner in regard to any immediate or prospective business before the Office;

(ii) Render any legal advice or any legal services to a client of the other practitioner in regard to any immediate or prospective business before the Office; or

(iii) Meet in person or in the presence of the other practitioner in regard to any immediate or prospective business before the Office, with:

(A) Any Office employee in connection with the prosecution of any patent, trademark, or other case;

(B) Any client of the other practitioner, the other practitioner's law firm, or the client-employer of the other practitioner; or

(C) Any witness or potential witness whom the other practitioner, the other practitioner's law firm, or the other practitioner's client-employer may or intends to call as a witness in any proceeding before the Office. The term ''witness'' includes individuals who will testify orally in a proceeding before, or sign an affidavit or any other document to be filed in, the Office.

(f) When an excluded, suspended or resigned practitioner acts as a paralegal or performs services under paragraph (c) of this section, the practitioner shall not thereafter be reinstated to practice before the Office unless:

(1) The practitioner shall have filed with the OED Director an affidavit which:

(i) Explains in detail the precise nature of all paralegal or other services performed by the excluded, suspended or resigned practitioner, and

(ii) Shows by clear and convincing evidence that the excluded, suspended or resigned practitioner has complied with the provisions of this section and all imperative USPTO Rules of Professional Conduct; and

(2) The other practitioner shall have filed with the OED Director a written statement which:

(i) Shows that the other practitioner has read the affidavit required by paragraph (d)(1) of this section and that the other practitioner believes every statement in the affidavit to be true, and

(ii) States why the other practitioner believes that the excluded, suspended or resigned practitioner has complied with paragraph (c) of this section.

§ 11.59 Dissemination of disciplinary and other information.

(a) The OED Director shall inform the public of the disposition of each matter in which public discipline has been imposed, and of any other changes in a practitioner's registration status. Public discipline includes exclusion, as well as exclusion on consent; suspension; and public reprimand. Unless otherwise ordered by the USPTO Director, the OED Director shall give notice of public discipline and the reasons for the discipline to disciplinary enforcement agencies in the State where the practitioner is admitted practice, to courts where the practitioner is known to be admitted, and the public. If public discipline is imposed, the OED Director shall cause a final decision of the USPTO Director to be published. Final decisions of the USPTO Director include default judgments. See § 11.54(a)(2). If a private reprimand is imposed, the OED Director shall cause a redacted version of the final decision to be published.

(b) *Records available to the public.* Unless the USPTO Director orders that the proceeding or a portion of the record be kept confidential, the OED Director's records of every disciplinary proceeding where a practitioner is reprimanded, suspended, or excluded, including when said sanction is imposed by default judgment, shall be made available to the public upon written request, except that information may be withheld as necessary to protect the privacy of third parties. The record of a proceeding that results in a practitioner's transfer to disability inactive status shall not be available to the public.

(c) *Access to records of exclusion by consent.* The order excluding a practitioner on consent under § 11.27 shall be available to the public. However, the affidavit required under paragraph (a) of § 11.27 shall not be available to the public or made available for use in any other proceeding except by order of the USPTO Director or upon written consent of the practitioner.

§ 11.60 Petition for reinstatement.

(a) *Restrictions on reinstatement.* An excluded, suspended or resigned practitioner shall not resume practice of patent, trademark, or other non-patent law before the Office until reinstated by order of the OED Director or the USPTO Director.

(b) *Petition for reinstatement.* An excluded or suspended practitioner shall be eligible to apply for reinstatement only upon expiration of the period of suspension or exclusion and the practitioner's full compliance with § 11.58. An excluded practitioner shall be eligible to apply for reinstatement no earlier than at least five years from the effective date of the exclusion. A resigned practitioner shall be eligible to petition for reinstatement and must show compliance with § 11.58 no earlier than at least five years from the date the practitioner's resignation is accepted and an order is entered excluding the practitioner on consent.

(c) *Review of reinstatement petition.* An excluded, suspended or resigned practitioner shall file a petition for reinstatement accompanied by the fee required by § 1.21(a)(10) of this subchapter. The petition for reinstatement shall be filed with the OED Director. An excluded or suspended practitioner who has violated any provision of § 11.58 shall not be eligible for reinstatement until a continuous period of the time in compliance with § 11.58 that is equal to the period of suspension or exclusion has elapsed. A resigned practitioner shall not be eligible for reinstatement until compliance with § 11.58 is shown. If the excluded, suspended or resigned practitioner is not eligible for reinstatement, or if the OED Director determines that the petition is insufficient or defective on its face, the OED Director may dismiss the petition. Otherwise the OED Director shall consider the petition for reinstatement. The excluded, suspended or resigned practitioner seeking reinstatement shall have the burden of proof by clear and convincing evidence. Such proof shall be included in or accompany the petition, and shall establish:

(1) That the excluded, suspended or resigned practitioner has the good moral character and reputation, competency, and learning in law required under § 11.7 for admission;

(2) That the resumption of practice before the Office will not be detrimental to the administration of justice or subversive to the public interest; and

(3) That the suspended practitioner has complied with the provisions of § 11.58 for the full period of suspension, that the excluded practitioner has complied with the provisions of § 11.58 for at least five continuous years, or that the resigned practitioner has complied with § 11.58 upon acceptance of the resignation.

(d) *Petitions for reinstatement—Action by the OED Director granting reinstatement.* (1) If the excluded, suspended or resigned practitioner is found to have complied with paragraphs (c)(1) through (c)(3) of this section, the OED Director shall enter an order of reinstatement, which shall be conditioned on payment of the costs of the disciplinary proceeding to the extent set forth in paragraphs (2) and (3) below.

(2) *Payment of costs of disciplinary proceedings.* Prior to reinstatement to practice, the excluded or suspended practitioner shall pay the costs of the disciplinary proceeding. The costs imposed pursuant to this section include all of the following:

(i) The actual expense incurred by the OED Director or the Office for the original and copies of any reporter's transcripts of the disciplinary proceeding, and any fee paid for the services of the reporter;

(ii) All expenses paid by the OED Director or the Office which would qualify as taxable costs recoverable in civil proceedings; and

(iii) The charges determined by the OED Director to be ''reasonable costs'' of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for services of attorneys and experts, of the Office of Enrollment and Discipline in the preparation or hearing of the disciplinary proceeding, and costs incurred in the administrative processing of the disciplinary proceeding.

(3) An excluded or suspended practitioner may be granted relief, in whole or in part, only from an order assessing costs under this section or may be granted an extension of time to pay these costs, in the discretion of the OED Director, upon grounds of hardship, special circumstances, or other good cause.

(e) *Petitions for reinstatement—Action by the OED Director denying reinstatement.* If the excluded, suspended or resigned practitioner is found unfit to resume the practice of patent law before the Office, the OED Director shall first provide the excluded, suspended or resigned practitioner with an opportunity to show cause in writing why the petition should not be denied. Failure to comply with § 11.12(c) shall constitute unfitness. If unpersuaded by the showing, the OED Director shall deny the petition. The OED Director may require the excluded, suspended or resigned practitioner, in meeting the requirements of § 11.7, to take and pass an examination under § 11.7(b), ethics courses, and/or the Multistate Professional Responsibility Examination. The OED Director shall provide findings, together with the record. The findings shall include on the first page, immediately beneath the caption of the case, a separate section entitled ''Prior Proceedings'' which shall state the docket number of the original disciplinary proceeding in which the exclusion or suspension was ordered.

(f) *Resubmission of petitions for reinstatement.* If a petition for reinstatement is denied, no further petition for reinstatement may be filed until the expiration of at least one year following the denial unless the order of denial provides otherwise.

(g) *Reinstatement proceedings open to public.* Proceedings on any petition for reinstatement shall be open to the public. Before reinstating any excluded or suspended practitioner, the OED Director shall publish in the Official Gazette a notice of the excluded or suspended practitioner's petition for reinstatement and shall permit the public a reasonable opportunity to comment or submit evidence with respect to the petition for reinstatement.

§ 11.61 Savings clause.

(a) A disciplinary proceeding based on conduct engaged in prior to the effective date of these regulations may be instituted subsequent to such effective date, if such conduct would continue to justify suspension or exclusion under the provisions of this part.

(b) No practitioner shall be subject to a disciplinary proceeding under this part based on conduct engaged in before the effective date hereof if such conduct would not have been subject to disciplinary action before such effective date.

(c) Sections 11.24, 11.25, 11.28 and 11.34 through 11.57 shall apply to all proceedings in which the complaint is filed on or after the effective date of these regulations. Section 11.26 and 11.27 shall apply to matters pending on or after the effective date of these regulations.

(d) Sections 11.58 through 11.60 shall apply to all cases in which an order of suspension or exclusion is entered or resignation is accepted on or after the effective date of these regulations.

§ 11.62–11.99 [Reserved]

Dated: February 5, 2007.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 07–800 Filed 2–27–07; 8:45 am]

BILLING CODE 3510–16–P

Federal Register

Wednesday,
February 28, 2007

Part IV

The President

Presidential Determination No. 2007–11 of January 26, 2007—Transfer of Funds Under Section 610 of the Foreign Assistance Act of 1961

Presidential Determination No. 2007–12 of February 7, 2007—Implementation of Sections 603 and 604 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228)

Presidential Determination No. 2007–13 of February 14, 2007—Presidential Determination on Waiving Prohibition on United States Military Assistance With Respect to Chad

Federal Register
Vol. 72, No. 39
Wednesday, February 28, 2007

Presidential Documents

Title 3—

The President

Presidential Determination No. 2007–11 of January 26, 2007

Transfer of Funds Under Section 610 of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 610 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2360) (the ''Act''), I hereby determine it necessary for the purposes of that Act that up to $86.362 million in fiscal year 2006 funds made available under chapter 4 of part II of the Act be transferred to, and consolidated with, funds made available under chapter 8 of part I of the Act, and such funds are hereby so transferred and consolidated.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

THE WHITE HOUSE,
Washington, January 26, 2007.

[FR Doc. 07–935
Filed 2–27–07; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2007–12 of February 7, 2007

Implementation of Sections 603 and 604 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228)

Memorandum for the Secretary of State

Consistent with the authority contained in section 604 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228) (the ''Act''), and with reference to the determinations set out in the report to the Congress transmitted pursuant to section 603 of the Act, regarding noncompliance by the Palestine Liberation Organization (PLO) and the Palestinian Authority with certain commitments, I hereby impose the sanction set out in section 604(a)(2), ''Downgrade in Status of the PLO Office in the United States.'' This sanction is imposed for a period of 180 days from the date hereof or until such time as the next report required by section 603 of the Act is transmitted to the Congress, whichever is later. You are authorized and directed to transmit to the appropriate congressional committees the report described in section 603 of the Act.

Furthermore, I hereby determine that it is in the national security interest of the United States to waive that sanction, pursuant to section 604(c) of the Act. This waiver shall be effective for a period of 180 days from the date hereof or until such time as the next report required by section 603 of the Act is transmitted to the Congress, whichever is later.

You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

THE WHITE HOUSE,
Washington, February 7, 2007.

[FR Doc. 07–936
Filed 2–27–07; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2007–13 of February 14, 2007

Presidential Determination on Waiving Prohibition on United States Military Assistance With Respect to Chad

Memorandum for the Secretary of State

Consistent with the authority vested in me by section 2007 of the American Servicemembers' Protection Act of 2002, (the ''Act''), title II of Public Law 107–206 (22 U.S.C. 7421 *et seq.*), I hereby:

• Determine that Chad has entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against U.S. personnel present in such country; and

• Waive the prohibition of section 2007(a) of the Act with respect to this country for as long as such agreement remains in force.

You are authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
Washington, February 14, 2007.

[FR Doc. 07–937
Filed 2–27–07; 8:45 am]
Billing code 4710–10–P

Federal Register

Wednesday,
February 28, 2007

Part V

The President

Notice of February 26, 2007—Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

Federal Register
Vol. 72, No. 39
Wednesday, February 28, 2007

Presidential Documents

Title 3—

The President

Notice of February 26, 2007

Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

On March 1, 1996, by Proclamation 6867, a national emergency was declared to address the disturbance or threatened disturbance of international relations caused by the February 24, 1996, destruction by the Cuban government of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. In July 1996 and on subsequent occasions, the Cuban government stated its intent to forcefully defend its sovereignty against any U.S.-registered vessels or aircraft that might enter Cuban territorial waters or airspace while involved in a flotilla or peaceful protest. Since these events, the Cuban government has not demonstrated that it will refrain from the future use of reckless and excessive force against U.S. vessels or aircraft that may engage in memorial activities or peaceful protest north of Cuba. On February 26, 2004, by Proclamation 7757, the scope of the national emergency was expanded in order to deny monetary and material support to the repressive Cuban government, which had taken a series of steps to destabilize relations with the United States, including threatening to abrogate the Migration Accords with the United States and to close the United States Interests Section. Further, Cuba's most senior officials repeatedly asserted that the United States intended to invade Cuba, despite explicit denials from the U.S. Secretaries of State and Defense that such action is planned. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Cuba and the emergency authority relating to the regulation of the anchorage and movement of vessels set out in Proclamation 6867 as amended and expanded by Proclamation 7757.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
February 26, 2007.

[FR Doc. 07–941
Filed 2–27–07; 8:49 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 72, No. 39

Wednesday, February 28, 2007

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Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
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Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
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Privacy Act Compilation	**741–6064**
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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4615–4942	1
4943–5148	2
5149–5326	5
5327–5594	6
5595–5912	7
5913–6140	8
6141–6432	9
6433–6688	12
6689–6918	13
6919–7344	14
7345–7546	15
7547–7736	16
7737–7820	20
7821–7922	21
7923–8086	22
8087–8260	23
8261–8584	26
8585–8878	27
8879–9232	28

CFR PARTS AFFECTED DURING FEBRUARY

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.

2 CFR

Ch. XXV	4943
3254	6141

3 CFR

Proclamations:	
6867 (See Notice of February 26, 2007)	9231
7757 (See Notice of February 26, 2007)	9231
8097	6670
8104	5323
8105	5913
8106	8259
Executive Orders:	
13396 (See Notice of Feb. 5, 2007)	5593
13425 (Supersedes: Military Order of November 13, 2001	7737
Administrative Orders:	
Memorandums:	
Memorandum of January 25, 2007	5149
Memoradum of February 5, 2007	6917
Memorandum of February 9, 2007	7343
Memorandum of February 15, 2007	7819
Military Order of November 13, 2001 (Superseded by: EO13425)	7737
Presidential Determinations:	
No. 2007-11 of January 26, 2007	9223
No. 2007-12 of February 7, 2007	9225
No. 2007-13 of February 14, 2007	9227
Notices:	
Notice of February 5, 2007	5593
Notice of February 26, 2007	9231

5 CFR

890	5151, 7345
950	6142

6 CFR

13	6143

7 CFR

301	4945, 6433, 7923, 8585
305	8087
318	8087
319	8261
354	8261
916	7821
917	7821
920	7547
958	7549
966	5327
1416	6435
1496	6450
3550	5153
Proposed Rules:	
930	5646
1000	6179, 7753
1001	6179, 7753
1005	6179, 7753
1006	6179, 7753
1007	6179, 7753
1030	6179, 7753
1032	6179, 7753
1033	6179, 7753
1124	6179, 7753
1126	6179, 7753
1131	6179, 7753
1215	8633

8 CFR

Proposed Rules:	
103	4888

9 CFR

Proposed Rules:	
92	6490
93	6490
94	6490, 7934
98	6490
160	8634
161	8634
381	8261

10 CFR

72	4615, 5595
73	4945
1304	8879
Proposed Rules:	
40	5348
50	8951
72	4660, 5348, 8951
73	8951
74	5348
150	5348
170	5108
171	5108
430	6184
431	6186

11 CFR

100	5595
111	7551

12 CFR

611	5606, 7927
612	5606
613	5606

614.....5606
615.....5606
619.....7927
620.....7927
621.....7927
624.....7927
627.....7927
630.....7927
701.....7927

Proposed Rules:
354.....5217

13 CFR

123.....5607

14 CFR

1.....7346
23 .....4618, 5915, 5917
25.....8261, 8882
39 .....4625, 4633, 4635, 4948, 5157, 5160, 5164, 5919, 5921, 5923, 5925, 6457, 6459, 6461, 6919, 6921, 6923, 6925, 6927, 6928, 6931, 6933, 7554, 7555, 7559, 7561, 7563, 7566, 7568, 7572, 7576, 7578, 7581, 8089, 8263, 8604, 8608, 8610, 8613, 8615, 8617, 8619, 8620, 8622
61.....6884
65.....7739
71 .....5607, 5608, 5609, 5610, 5611, 5612, 6462, 7928, 8099, 8100, 8265, 8266, 8267
91 .....6689, 6884, 7739
95.....8100
97 .....4950, 4952, 7821, 7823
119.....6884
121.....6884, 7346
129.....7740
135.....6884, 7346
136.....6884
382.....8268
401.....7740
415.....7740
431.....7740
435.....7740
440.....7740
460.....7740

Proposed Rules:
1.....6968
21.....6968
23.....4661
25.....8296
39 .....4663, 4964, 5359, 5362, 5364, 6500, 6973, 6975, 6977, 6980, 6982, 7355, 7357, 7838, 7934, 7936, 7939, 8134, 8303, 8305, 8307, 8309, 8311, 8639
43.....6968
45.....6968
61.....5806
71 .....6501, 8136, 8137, 8314
91.....5806
121.....5366
125.....5366
135.....5366
141.....5806
145.....8641

15 CFR

801.....5167, 5169
902.....6144

Proposed Rules:
740.....8315

16 CFR

Proposed Rules:
305.....6836
1610.....8844

17 CFR

4.....8106
38.....6936

Proposed Rules:
232.....6676
239.....6676
240.....6378
249b.....6378
270.....6676
274.....6676

18 CFR

35.....5171
50.....5613
157.....5614
365.....8277
366.....5171, 8277
375.....5171
380.....5613

Proposed Rules:
Ch. I.....8316
2.....7583
33.....7583
38.....8318
365.....7583
366.....7583
410.....6509

19 CFR

123.....8109
208.....8624

20 CFR

Proposed Rules:
230.....8643
652.....7840
661.....7840
662.....7840
663.....7840
664.....7840
667.....7840

21 CFR

16.....7825
71.....8111
171.....8111
510.....5329
520.....6463
522.....7348
524.....5929, 6463
529.....5329
558.....4954
864.....4637
1240.....7825

Proposed Rules:
20.....5944
101.....5367
201.....5944
207.....5944
314.....5944
330.....5944
352.....7941
514.....5944
515.....5944
601.....5944
607.....5944
610.....5944
868.....8643
1271.....5944
1308.....7945

22 CFR

72.....8887
126.....5614

23 CFR

450.....7224
500.....7224
657.....7741
658.....7741
773.....6464

24 CFR

15.....8580
28.....5586
30.....5586
81.....5586
180.....5586
3282.....5586
3500.....5586

25 CFR

Proposed Rules:
502.....7359
546.....7359
547.....7360

26 CFR

1 .....4955, 5174, 6155
54.....7929
602.....5174, 6155

Proposed Rules:
1 .....5228, 6190, 7560
20.....7560
25.....7560
31.....7560
53.....7560
54.....7560
56.....7560
301.....6984, 7361

27 CFR

9.....6165

28 CFR

72.....8894

29 CFR

1603.....5616
1610.....5616
1910.....7136
2550.....6473, 7516
2578.....7516
2590.....8628
4022.....7349
4044.....7349

Proposed Rules:
4006.....7755
4007.....7755

30 CFR

250.....8897, 8900
253.....8897
943.....5330

Proposed Rules:
914.....5374
926.....5377
938.....5380

31 CFR

500.....4960

32 CFR

Proposed Rules:
197.....8952

33 CFR

1.....7929
100.....5333
104.....5930
110.....6690
117 .....4961, 5333, 5617, 6692, 7351, 7581, 7582, 8111, 8278, 8279
120.....5930
155.....6168
165 .....4639, 5333, 5619, 8112

Proposed Rules:
100 .....4669, 6510, 8323
110.....5382
165.....6512
334.....7841, 8325

36 CFR

1258.....8279

Proposed Rules:
1258.....8327

37 CFR

201.....5931

Proposed Rules:
1.....7583
2.....6984
11.....9196

38 CFR

3.....6958
59.....6959

Proposed Rules:
17.....6696

39 CFR

Proposed Rules:
111.....7587
3001.....5230

40 CFR

52 .....4641, 5932, 7826, 7829, 8903
55.....5936
59.....8428
60.....4641
62.....5940
63.....8630
70.....7829, 8280
80.....8428
85.....8428
86 .....6049, 7921, 8428
180 .....4963, 5621, 5624, 8913, 8916, 8923, 8928
261.....4645
271.....8283
600.....6049, 7921

Proposed Rules:
49.....5944
51.....5944
52 .....4671, 4674, 5232, 5946, 6986, 7361, 7842, 8138, 8329
60 .....4674, 5510, 6320
62.....5946
70.....7842, 8332
80.....4966
81.....6986

41 CFR

102-76.....5942

42 CFR

Proposed Rules:
412.....4776, 5507
413.....4776, 5507

43 CFR

1820.....6480
2930.....7832

Proposed Rules:
3800.....8139

44 CFR

64.....5630
67.....5197, 7351

Proposed Rules:
67 .....5239, 5247, 6192, 7365, 8652

45 CFR

620.....4943
689.....4943
1154.....6141
1611.....8114

46 CFR

1.....7929
10.....7929
296.....5342
401.....8115

47 CFR

0.....5631
15.....5632, 8132
64.....6960

48 CFR

12.....6882
22.....6882
31.....6882
32.....6882
52.....6882
211.....6480
213.....6484
225.....6484
233.....6485
237.....6485
252.....6480, 6486
511.....4649
516.....4649
532.....4649
538.....4649
546.....4649
552.....4649

Proposed Rules:
2.....4675, 7588
3.....7588
4.....4675
5.....4675
13.....4675
52.....7588
204.....6515
212.....6515
252.....6515
Ch. 7.....6812
1523.....8143
1552.....8143

49 CFR

71.....6170
192.....4655
195.....4655
613.....7224
1515.....5632
1540.....5632
1572.....5632

Proposed Rules:
350.....8957
371.....5947
375.....5947
385.....8957
386.....5947
387.....5947
395.....8957
396.....8957
531.....8664
533.....8664
571.....5385
604.....7526
1243.....4676
1520.....7376
1580.....7376

50 CFR

17.....6052
21.....8931
91.....6487
223.....5633
229 .....4657, 5214, 7931
300.....6144
404.....5642
622.....5345
635.....5633, 6966
648 .....5643, 8287, 8632
665.....8289
679 .....5346, 5644, 6177, 6178, 6694, 7353, 7354, 7749, 7750, 7751, 7752, 7933, 8132, 8133, 8291

Proposed Rules:
17 .....4967, 5552, 5856, 6106, 6699, 6703, 6998, 7381, 7843, 7852
223.....5648, 7382
300.....5652, 8333
622.....8145, 8335
660.....8335
665 .....7385, 7853, 8145
679.....5654, 7948
680.....5255

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 FEBRUARY 28, 2007

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- West Virginia; published 2-28-07

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts; published 2-28-07
- Halosulfuron-methyl; published 2-28-07
- Orthosulfamuron; published 2-28-07
- Sethoxydim; published 2-28-07

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
- California; published 1-10-07

JUSTICE DEPARTMENT

Sex Offender Registration and Notification Act; applicability; published 2-28-07

LEGAL SERVICES CORPORATION

Client grievance procedures; published 1-29-07

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Grants and agreements:
- Nonprocurement debarment and suspension; OMB guidance; implementation; published 1-23-07

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Privacy Act; implementation; published 2-28-07

TRANSPORTATION DEPARTMENT

Economic regulations:
- Domestic baggage liability; minimum limit increase; published 1-29-07

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- EXTRA Flugzeugbau GmbH; published 1-24-07
- McDonnell Douglas; published 1-24-07
- Pratt & Whitney; published 1-24-07

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Rinderpest and foot-and-mouth disease; disease status change—
  - Argentina; comments due by 3-6-07; published 1-5-07 [FR E6-22627]
- Uncooked pork and pork products; comments due by 3-6-07; published 1-5-07 [FR E6-22629]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Marine and andromous species—
  - Puget Sound steelhead; comments due by 3-9-07; published 2-7-07 [FR E7-02010]

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pollock; comments due by 3-7-07; published 2-23-07 [FR 07-00827]

International fisheries regulations:
- Pacific albacore tuna—
  - U.S. vessels eligible to fish in Canadian waters; annual listing; comments due by 3-9-07; published 2-7-07 [FR E7-02045]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- General provisions; comments due by 3-5-07; published 1-3-07 [FR E6-22283]

Air quality implementation plans; approval and promulgation; various States:
- Alaska; comments due by 3-7-07; published 2-5-07 [FR E7-01802]
- South Dakota; comments due by 3-5-07; published 2-1-07 [FR E7-01621]
- Utah; comments due by 3-5-07; published 2-1-07 [FR E7-01619]

Grants; State and local assistance:
- Clean Water Act Section 106 grants; permit fee incentive; allotment formula; comments due by 3-5-07; published 1-4-07 [FR E6-22549]

FEDERAL COMMUNICATIONS COMMISSION

Radio services, special:
- Aviation services—
  - Aviation communications; frequency allocation and radio treaty matters; amendments; comments due by 3-6-07; published 12-6-06 [FR E6-20451]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:
- Food labeling—
  - Conventional foods being marketed as functional foods; hearing; comments due by 3-5-07; published 10-25-06 [FR 06-08895]
  - Conventional foods being marketed as functional foods; hearing; comments due by 3-5-07; published 1-8-07 [FR E7-00047]
  - Uniform compliance date; comments due by 3-6-07; published 12-21-06 [FR E6-21902]

HEALTH AND HUMAN SERVICES DEPARTMENT

Quarantine, inspection, and licensing:
- Etiologic agents; interstate shipment; comments due by 3-5-07; published 1-3-07 [FR E6-21723]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Regattas and marine parades:
- Severn River, et al. Annapolis, MD; comments due by 3-5-07; published 2-1-07 [FR E7-01613]

HOMELAND SECURITY DEPARTMENT

Transportation Security Administration

Agency information collection activities; proposals, submissions, and approvals; comments due by 3-6-07; published 1-5-07 [FR E6-22611]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community development block grants:
- Small cities program; comments due by 3-5-07; published 1-3-07 [FR E6-22502]

Mortgage and loan insurance programs:
- Home equity conversion mortgage insurance; counseling standardization and roster; comments due by 3-9-07; published 1-8-07 [FR E7-00037]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Findings on petitions, etc.—
  - Sacramento Mountains thistle; 5-year status review; comments due by 3-5-07; published 12-5-06 [FR E6-20317]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Indiana; comments due by 3-8-07; published 2-6-07 [FR E7-01863]
- Montana; comments due by 3-8-07; published 2-6-07 [FR E7-01858]
- Pennsylvania; comments due by 3-8-07; published 2-6-07 [FR E7-01862]

NUCLEAR REGULATORY COMMISSION

Fee schedules revision; 90% fee recovery (2007 FY); comments due by 3-5-07; published 2-2-07 [FR E7-01634]

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
- Approved spent fuel storage casks; list; comments due by 3-5-07; published 2-1-07 [FR E7-01643]

SECURITIES AND EXCHANGE COMMISSION

Securities and investment advisers:
- Pooled investment vehicles, investor protections; private investment vehicles, accredited investor definition;

comments due by 3-9-07; published 1-4-07 [FR E6-22531]

SMALL BUSINESS ADMINISTRATION

Disaster loan program:

Small business economic injury disaster loans; comments due by 3-9-07; published 2-7-07 [FR E7-01972]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airmen certification and aircraft registration:

Pilot certificate upgrade; drug enforcement assistance; comments due by 3-6-07; published 1-5-07 [FR 06-09989]

Airworthiness directives:

Airbus; comments due by 3-8-07; published 2-6-07 [FR E7-01872]

Alpha Aviation Design Ltd.; comments due by 3-8-07; published 2-6-07 [FR E7-01873]

Boeing; comments due by 3-5-07; published 1-19-07 [FR E7-00708]

Cessna; comments due by 3-5-07; published 2-1-07 [FR E7-01604]

Enstrom Helicopter Corp.; comments due by 3-9-07; published 1-8-07 [FR E7-00043]

MD Helicopters, Inc.; comments due by 3-9-07; published 1-8-07 [FR E7-00041]

Turbomeca; comments due by 3-5-07; published 2-2-07 [FR E7-01709]

Airworthiness standards:

Special conditions—

Aviation Technology Group, Inc., Javelin Model 100 Series airplane; comments due by 3-5-07; published 2-1-07 [FR E7-01609]

Aviation Technology Group, Inc.; Javelin Model 100 Series airplane; comments due by 3-5-07; published 2-1-07 [FR E7-01610]

Class E airspace; comments due by 3-5-07; published 1-18-07 [FR E7-00601]

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Grants:

Rail line relocation and improvement projects; implementation; comments due by 3-5-07; published 1-17-07 [FR 07-00045]

TREASURY DEPARTMENT

Internal Revenue Service

Procedure and administration:

Reportable transactions; disclosure by material advisors; American Jobs Creation Act modifications; hearing; comments due by 3-6-07; published 2-15-07 [FR E7-02634]

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 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 742 / Public Law 110–6

Antitrust Modernization Commission Extension Act of 2007 (Feb. 26, 2007; 121 Stat. 61; 1 page)

Last List February 20, 2007

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